RBR/KFN/7434/.A2/N67/

The NORTH CAROLINA REGISTER

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ISSUE DATE: October 14, 1994

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STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS
CONSTITUTION
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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars ($105.00) for 24 issues. Individual issues may be purchased for eight dollars ($8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

(1) Single pages may be obtained at a minimum cost of two dollars and 50 cents ($2.50) for 10 pages or less, plus fifteen cents ($0.15) per each additional page.

(2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars ($750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER

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9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
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This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* *An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

** *The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.*

Revised 03/94

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 18F .0313 and .0319.

The proposed effective date of this action is January 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice):
A demand for a public hearing must be made in writing and mailed to Charlotte Tucker, Rulemaking Coordinator, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC 27603. This demand must be made within 15 days of this notice.

Reason for Proposed Action: Amend for further clarification in the provision of DWI assessments.

Comment Procedures: Anyone who wishes to submit written comments should address them to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Albemarle Bldg., Raleigh, NC 27603. Comments will be accepted from October 14, 1994 through November 14, 1994.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18F - PROGRAM SUPPORT STANDARDS

SECTION .0300 - SUBSTANCE ABUSE ASSESSMENTS FOR INDIVIDUALS CHARGED WITH OR CONVICTED OF DRIVING WHILE IMPAIRED (DWI)

.0313 DEFINITIONS

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

(1) "American Society of Addiction Medicine (ASAM) Placement Criteria" means the Patient Placement Criteria for the Treatment of Psychoactive Substance Abuse Disorders, copyright 1991 by the National Association of Addiction Treatment Providers and the American Society of Addiction Medicine. For these Rules, the ASAM Level I, Outpatient Treatment, has been divided into I.A., Short-term and I.B., Longer-term Outpatient Treatment.

(2) "Certified ADETS Instructor" means an individual who is certified by the Division in accordance with 10 NCAC 18M .0906 Instructor Certification, contained in Division publication, Standards for Area Programs and Their Contract Agencies, APSM 35-1, and available at the current printing cost.

(3) "Clinical Interview" means the face-to-face interview with a substance abuse professional intended to gather information on the client, including, but not limited to the following: demographics, medical history, past and present driving offense record, alcohol concentration of current offense, social and family history, substance abuse history, vocational background and mental status.

(4) "Continuing Care" means an outpatient service designed to maximize the recovery experience begun in more intensive inpatient or outpatient treatment. As a continuation of the treatment experience this service is expected to begin immediately upon the client's discharge from intensive treatment:

(a) When ~~the~~ continuing care follows an inpatient treatment experience~~, it shall~~:

~~(i) include, at a minimum, a total number of 20 contact hours of service during a 30-day period. Each week of the 30-day period shall have scheduled hours of service; and~~

~~(ii) continue for a minimum period of 90 days.~~

(i) a total of 90 days, including the intensive inpatient treatment period, shall be provided;

(ii) a minimum of 20 contact hours of service during a 30-day period shall be provided. Each week of the 30-day period shall have scheduled hours of service; and

(iii) for any of the remaining 90 days of continuing care, a specific schedule

for contact hours of service is not required.

(b) The services shall be provided according to a written continuing care plan which shall:

(i) address the needs of the client; and

(ii) utilize individual, family and group counseling as required to meet the needs of the client.

(5) "Division" means the same as defined in G.S. 122C-3; and is hereafter referred to as DMH/DD/SAS.

(6) "DMH Form 508 (DWI Services Certificate of Completion)" means the four-part form which is used in documenting the offenders completion of the DWI substance abuse assessment and treatment or ADETS.

(7) "Driving record" means a person's North Carolina driving history, as maintained by the North Carolina Driver's License Division's history file.

(8) "DSM" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(9) "DWI" means impaired driving as described in G.S. 20-138.1.

(10) "DWI categories of service" mean:

(a) "Alcohol and Drug Education Traffic School (ADETS)" means an approved curriculum which shall:

(i) include 10 to 13 contact hours in a classroom setting;

(ii) be provided by area programs or their designated agencies with certified ADETS instructors; and

(iii) be designed for persons:

(A) who have only one DWI conviction (lifetime);

(B) whose assessment did not identify a "Substance Abuse Handicap"; and

(C) whose alcohol concentration was .14 or less.

(b) "Day treatment" means a structured, outpatient service. It may also be called intensive outpatient treatment, as defined in 10 NCAC 14N .0900 and applicable portions of 10 NCAC 14K .0300, which include ASAM Level II treatment criteria.

(c) "Inpatient residential treatment services" means an array of services which may include detoxification and rehabilitation in a structured environment, as set forth in 10 NCAC ~~14O~~ 14N .0300, and contained in Licensure Rules as defined in Item (13) of this Rule. Such services will correspond with ASAM Level III and Level IV treatment criteria.

(d) "Longer-term outpatient treatment" means a structured program meeting the ASAM definition of Level I, Outpatient Treatment, and requiring a minimum of 40 contact hours scheduled to maintain the client in active treatment for a minimum period of 60 days, providing counseling and learning experiences which include the "Minimal Subject Content," as defined in Item (14) of this Rule. The facility must operate in compliance with Licensure Rules, 10 NCAC 14N .0700 and applicable portions of 10 NCAC 14K .0300.

(e) "Short-term outpatient treatment" means a structured program meeting the broad definition of "ASAM Level I, Outpatient Treatment," and requiring a minimum of 20 contact hours over a period of at least 30 days, including counseling and didactic experiences which include the minimal subject content. Facilities which are approved to provide this shall operate in compliance with Licensure Rules contained in 10 NCAC 14N .0700 and applicable portions of 10 NCAC 14K .0300.

(11) "DWI Substance Abuse Assessment" means a service provided to persons charged with or convicted of DWI to determine the presence or absence of a substance abuse handicap. The assessment involves a clinical interview as well as the use of a standardized test.

(12) "Facility" means the term as defined in G.S. 122C-3(14).

(13) "Licensure rules" mean the rules contained in 10 NCAC 14K through 14O of the North Carolina Administrative Code and published in Division publication, Licensure Rules for MH/DD/SA Facilities, APSM 40-2.

(14) "Minimal subject content" means the following list of subjects which shall be addressed in the educational portion of any treatment program serving DWI offenders:

(a) Effects of Alcohol and Drugs on the

Body/Brain;
(b) The Nature of Denial;
(c) Disease Concept of Chemical Dependency;
(d) Progression of Disease and Recovery (Jellinek Chart);
(e) Chemical Dependency and the Family;
(f) Introduction to Self-Help Groups/12 Step Recovery Programs;
(g) Relapse Prevention and Strategies for Recovery; and
(h) Safe Roads Act Penalties.

(15) "Special service plan" means a plan for persons who exhibit unusual circumstances, such as severe hearing impairment; other physical disabilities; concurrent psychiatric illness; language and communication problems; intractable problems of distance, transportation and scheduling; and chronic offenders with multiple unsuccessful treatment experiences.

(16) "Standardized Test" means an instrument approved by the Department of Human Resources, with documented reliability and validity, which serves to assist the assessment agency or individual in determining if the client has a substance abuse handicap. A current listing of the approved standardized tests may be obtained by writing the DWI/Criminal Justice Branch, Division of MH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603.

(17) "Substance Abuse Handicap" means a degree of dysfunction directly related to the recurring use/abuse of an impairing substance.

Statutory Authority G.S. 20-138.1; 20-179; 122C-3.

.0319 REPORTING REQUIREMENTS

(a) The assessment portion of the DMH Form 508 shall be completed for each client who receives a DWI substance abuse assessment. An initial supply of this form may be obtained from the DWI/Criminal Justice Branch of the DMH/DD/SAS, 325 N. Salisbury Street, Raleigh, N.C. 27603.

(b) The assessment portion of DMH Form 508 shall be signed by a certified alcoholism, drug abuse, or substance abuse counselor. The date of expiration of that professional's certification shall be indicated on the client's Certificate of Completion and no assessment shall be signed after the expiration date.

(c) The facility providing the recommended treatment or education shall have the client sign the appropriate release of information, and progress reports shall be filed with the court or the Department of Correction at intervals not to exceed six months.

(d) Upon completion of the recommended treatment or ADETS service, the agency shall:

(1) forward the top page of the completed DMH Form 508 to the DWI/Criminal Justice Branch, DMH/DD/SAS; and
(2) retain, for a period of at least five years, the appropriate page of the form, and distribute the remaining pages to the offender and the court as specified on the bottom of the form.

(e) In the event that an assessment or treatment agency ceases to provide DWI-related services, the agency shall notify, in writing, the DWI Criminal Justice Branch to assure that all DMH Form 508s and other related documents specified in G.S. 20-179(m) are properly processed.

(f) By February 15 of each year, all assessing agencies shall forward, in writing, to the DWI/Criminal Justice Branch of the Division the following information on the previous year's activities, which shall include but need not be limited to the number of:

(1) pre-trial assessments conducted;
(2) post trial assessments conducted;
(3) individuals referred to ADETS; and
(4) substance abuse handicaps identified and the recommended levels of treatment.

Statutory Authority G.S. 20-179(m).

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 6A .0801 - .0806, .0808 - .0809 and .0811.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 8, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Pursuant to recommendations made by continuing education advisory committee in compliance with G.S. 58-33-135, the amendments clarify problems identified during the first three years of the program.

Comment Procedures: Written comments may be sent to George Brown at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call George Brown at (919) 733-7487 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

.0801 DEFINITIONS

As used in this Section:

(1) "Cluster of courses" means a number of courses, each of which is less than ~~120~~ 100 minutes in length, but altogether ~~120~~ 100 minutes or more in length, that are offered within one state or national program or convention.

(2) "Course" means a continuing education course directly related to insurance principles and practices or a course designed and approved specifically for licensees; but does not mean a business course of a general nature or an insurance marketing or sales course.

(3) "Disinterested third party" means a person not concerned, with respect to possible gain or loss, in the result of a pending course final examination.

(4) "Distance learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through various methods of telecommunication.

(5) "Dual credit course" means a continuing education course that contains material that qualifies for both life and health insurance ICECs and property and liability insurance ICECs.

(6) ~~(5)~~ "Insurance continuing education credit or "ICEC"" means a value assigned to a course by the Commissioner after review and approval of a course information. This term means the same as "credit hour" as used in G.S. 58-33-130.

(7) ~~(6)~~ "Instructor" means an individual who teaches, lectures, leads, or otherwise instructs a course.

(8) ~~(7)~~ "Licensee" means a duly licensed ~~fire and casualty~~ property and liability insurance~~;~~ or life~~, accident,~~ and health insurance~~; or accident and health insurance~~ agent or broker who is required to comply with this Section.

(9) ~~(8)~~ "Supervised examination" means a timed, closed book examination that is monitored by a disinterested third party and graded by a nationally recognized insurance education program.

(10) ~~(9)~~ "Supervised individual study" means audio tapes, video tapes, computer programs, programmed learning courses, and similar types of learning experiences that are completed in the presence of an approved instructor.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0802 LICENSEE REQUIREMENTS

(a) Life and health licensees shall obtain 12 ICECs during each calendar year in approved life and health courses.

(b) Property and liability licensees shall obtain 12 ICECs during each calendar year in approved property and liability courses.

(c) Any person holding more than one license to which this Section applies shall obtain 18 ICECs during each calendar year, including a minimum of six ICECs for each kind of license.

(d) An instructor shall receive the maximum ICECs awarded to a student for the course.

(e) Licensees shall not receive ICECs for the same course more often than one time in any three calendar year period except when there are major revisions within the course. The Commissioner shall determine whether the revisions are substantial enough to qualify for additional ICECs within a three calendar year period.

(f) Licensees do not have to obtain ICECs for the calendar year in which they are initially licensed.

(g) Licensees shall receive ICECs for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(h) Licensees shall maintain records of all ICECs for three years following the obtaining of such ICECs, which records shall be available for inspection upon the Commissioner's request.

(i) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the requirements of this Section.

(j) Licensees are exempt from the requirements of this Section if they:

(1) are age 65 or older; and

(2) have been continuously licensed in the line of insurance for at least 25 years; and either

(3) hold a nationally recognized professional designation for the line of insurance. Acceptable designations include those listed in 11 NCAC 6A .0803 (a) and (b); or

(4) meet the requirements of Subparagraphs (1) and (2) of this Paragraph and certify to the Department of Insurance annually they are inactive agency owners who neither solicit applications for insurance nor take part in the day to day operation of the agency.

(k) Any licensee holding more than one license to which this Section applies and qualifies for exemption under Paragraph (j) of this Rule for one license type must obtain a minimum of six ICECs in each calendar year for the license type not exempted.

(l) ~~(k)~~ Courses completed prior to the issue date of a new license do not meet the requirements of this Section for that new license.

(m) ~~(l)~~ No credit will be given for courses taken before they have been approved by the Department.

(n) ~~(m)~~ Persons who hold adjuster licenses shall obtain 12 ICECs during each calendar year in approved property and liability courses. As used in this Section, "licensee" includes a person who holds an adjuster license and who is required to comply with this Section.

(o) ~~(n)~~ Each agent holding an active surplus lines license with an effective date before January 1, 1994, must take a surplus lines course as part of the agent's 1994 property and liability continuing education requirement. Each agent issued a surplus lines license in 1994 must take a surplus lines course as part of the agent's 1995 property and liability continuing education requirement.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0803 COURSES SPECIFICALLY APPROVED

(a) Courses that are necessary to obtain the following nationally recognized designations are approved as they exist on the effective date of this Section for 18 ICECs upon successful completion of the national examination for each part:

(1) Accredited Advisor in Insurance (AAI);

(2) Associate in Claims (AIC);

(3) Associate in Loss Control Management (ALCM);

(4) Associate in Risk Management (ARM);

(5) Associate in Underwriting (AU);

(6) Certified Employees Benefit Specialist (CEBS);

(7) Chartered Financial Consultant (ChFC);

(8) Chartered Life Underwriter (CLU);

(9) Chartered Property and Casualty Underwriter (CPCU);

(10) Fellow Life Management Institute (FLMI);

(11) General Insurance (INS);

(12) Life Underwriter Training Council Fellow, 26 week (LUTCF).

(b) Courses that are necessary to obtain the following nationally recognized designations are approved as they exist on the effective date of this Section for an amount of ICECs to be determined by the Commissioner's evaluation process:

(1) Agency Management Training Course Graduate;

(2) Certified Insurance Counselor (CIC);

(3) Certified Insurance Service Representative (CISR);

(4) Certified Professional Service Representative (CPSR);

(5) Fraternal Insurance Counselor (FIC);

(6) Health Insurance Associate (HIA);

(7) Life Underwriter Training Council Fellow, 13 weeks (LUTCF);

(8) Registered Health Underwriter (RHU).

(c) Courses that are taught by a college or university that is accredited by the Southern Association of Colleges and Schools are approved as they exist on the effective date of this Section for a number of ICECs to be determined by the Commissioner's evaluation process.

(d) Each course provider or designee shall submit a fee of one dollar ($1.00) per approved ICEC per individual that successfully completes the course.

(e) ~~The statute and rule update~~ Any course prepared by the Commissioner is approved as a

~~mandatory~~ component of each resident licensee's continuing education requirement for a number of ICECs to be determined ~~annually~~ by the Commissioner's evaluation process.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0804 CARRYOVER CREDIT

(a) No more than 75 percent of the ICECs required shall be carried forward from the previous year. Licensees holding one license shall carry over no more than nine ICECs. Licensees holding more than one license shall carry over no more than six ICECs for any one license. ~~No carry over credit will be given for Medicare supplement/long term care courses or for the mandatory statute and rule update course.~~

(b) Only whole ICECs can be carried over.

(c) No carryover shall apply to a dual license holder if the licensee qualifies for an exemption under Rule .0802(j) of this Section.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0805 CALCULATION OF ICECs

The following standards shall be used to evaluate courses submitted for continuing education approval:

(1) Programs requiring meeting or classroom attendance:

(a) Courses or clusters of courses of less than ~~120~~ 100 minutes will not be evaluated for continuing education ICECs.

(b) Courses will not be approved for less than one ICEC.

(c) One ICEC shall be awarded for each ~~60~~ 50 minutes of instruction unless the Commissioner assigns fewer ICECs based upon the evaluation of the submitted course materials. Courses will only be approved for whole ICECs.

(d) Course providers must properly monitor participants for attendance and attention.

(2) Independent study programs:

(a) Independent study programs qualify for continuing education only when there is a supervised examination. No examination administered or graded by insurance company personnel for its own employees will be considered to be administered by a disinterested third party.

(b) Each course shall be assigned ICECs, which shall be awarded upon the successful passing of the supervised examination.

(3) Distance Learning Programs:

(a) Distance learning qualifies only when an approved instructor is available to respond to questions and to maintain attendance records.

(b) Any organization sponsoring a teleconference shall have a person approved to be an on-site instructor.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0806 ATTENDANCE

(a) If six ICECs or less are assigned to a course, the licensee must attend 100 percent of the course to receive any ICECs.

(b) If more than six ICECs are assigned to a course, and the licensee passes the exam and attends at least 80 percent of the course, the licensee shall receive 100 percent of the ICECs assigned to the course.

(c) If more than six ICECs are assigned to a course, and the licensee does not pass the exam but attends at least 80 percent of the course, the licensee shall receive 80 percent of the ICECs assigned to the course.

(d) An instructor may conduct a class with up to 30 students with no additional assistance. For classes with attendance exceeding 30 students, one monitor is required for each additional 50 students or any portion thereof.

(e) Providers conducting classes outside of the State where at least 25% of the students are requesting North Carolina ICECs shall make arrangements and pay all expenses for one or more Department continuing education monitors to attend.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0808 INSTRUCTOR QUALIFICATION

(a) Instructor qualification requirements shall be the same as those for instructors as provided in 11 NCAC 6A .0705(c), except that the Commissioner may approve instructors possessing specific areas of expertise to instruct courses comprising those areas of expertise.

(b) Insurance company trainers as instructors must be full time salaried employees of the insurance company sponsoring the course and must have as part of their full time responsibilities the duty to provide insurance company training.

(c) College and university instructors may be full time or adjunct faculty of the accredited college or university, must be teaching a curriculum course in his or her field of expertise, and must meet the requirements of the association that accredits the college or university.

(d) The Commissioner may require applicants and current instructors to submit to a personal interview, provide a video or audio type, a written history of courses taught or any other documentation that will verify the applicant's qualifications to instruct approved insurance courses.

Statutory Authority G.S. 58-33-130.

.0809 APPROVAL OF COURSES

(a) Providers of all courses specifically approved under 11 NCAC 6A .0803 must file copies of program catalogs, course outlines, copies of advertising literature, a filing fee of one hundred dollars ($100.00) per course up to a two thousand five hundred dollar ($2,500) per calendar year maximum, and any other documents or related materials that the Commissioner requests, prior to January 1, 1991, and within 30 days of any changes to such programs in the future.

(b) All providers of courses not specifically approved under 11 NCAC 6A .0803 must do the following:

(1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall apply on forms provided by the Commissioner; pay a filing fee of one hundred dollars ($100.00) per course up to a two thousand five hundred dollar ($2,500) per calendar year maximum and provide the requested number of copies of detailed outlines of the subject matter to be covered, copies of handouts to be given, the qualifications of each instructor, and other information requested by the Commissioner to support the request for approval.

(2) Providers of supervised individual study programs must file the requested number of copies of the study programs. Extra copies will be returned to a provider after course approval if a return fee is paid in advance.

(3) Such applications and accompanying information must be received by the Commissioner at least 30 days prior to the intended beginning date of the course.

(4) The Commissioner shall approve or deny the application; and shall indicate the number of ICECs that have been assigned to the course if approved. If a course is not approved or disapproved within 60 days after receipt of all required information, the course is deemed to be approved at the end of the 60-day period.

(5) If a course approval application is denied, a written explanation of the reason for such action shall be furnished with the denial.

(c) Course approval applications must include all of the following forms and attached information in exactly the following order:

(1) A cover letter with payment of a filing fee of one hundred dollars ($100.00) per course attached with separate paragraphs for the following:
   (A) a request that the course be evaluated;
   (B) for whom the course is designed;
   (C) the course objectives;
   (D) the names and duties of all persons who will be affiliated in an official capacity with the course;
   (E) the course provider's tuition and fee refund policy; and
   (F) an outline that shall include a statement of the method used to determine whether there will be meaningful attainments of education by licensees to be certified upon their satisfactory completion of the course. Such method may be a written examination, a written report, certification of attendance only, or other methods approved by the Commissioner. The outline shall describe the method of presentation;

(2) The course content outline with instruction hours assigned to the major topics;

(3) Instructor qualification form and instructor resume if not previously approved;

(4) Schedule of dates, beginning and ending times and places the course will be offered, along with the names of instructors for each course session.

Schedules shall be submitted at least 30 days in advance of any subsequent course offerings but it will not be necessary that courses be resubmitted unless there are substantial changes in content; ~~and~~

(5) A copy of the course completion certificate.; and

(6) A package of the course materials that each student shall be given before the start of class. At a minimum this package shall include the course content outline with instruction times assigned to all major topics, the instructor's resume, and a course and instructor assessment form.

(d) The Commissioner may waive any part of this Section for programs offered by the University of North Carolina system schools or the North Carolina Department of Community Colleges.

(e) A provider may request that its materials be kept confidential if they are of a proprietary nature. The Commissioner will review and promptly return such extra copies of materials if a return fee is paid in advance.

(f) A provider must indicate the requested primary line of authority on the course approval form for dual credit courses.

(g) ~~(f)~~ Courses awarded more than six ICECs must have an Insurance Department approved exam for the student to get full credit; otherwise, the limitations of 11 NCAC 6A .0806(c) will apply.

(h) ~~(g)~~ Cancelled course schedules must be submitted five days before the scheduled course offering. All students scheduled to attend the cancelled course must be informed of the cancellation.

(i) Dual credit courses that are submitted shall be awarded no more than six ICECs for one of the lines of insurance plus no more than three ICECs for the other line of insurance.

Statutory Authority G.S. 58-2-40; 58-33-130.

.0811 SANCTIONS FOR NONCOMPLIANCE

(a) This Rule establishes sanctions for licensees who fail to complete their annual continuing education requirements and for licensees, course providers, course provider personnel, course presenters, course presenter personnel, and course instructors who falsify any records or documents in connection with the continuing education program or who do not comply with G.S. 58-33-125 or this Section.

(b) The failure of a licensee to meet the annual continuing education requirement shall result in the cancellation of his or her license for the subsequent calendar year. The license will be reinstated upon proof that the licensee has completed the continuing education requirements and subsequently passed the agent's licensing examination by July 1 of each year of cancellation. If requirements for reinstatement are not completed by July 1, the licensee will be required to complete the full pre-licensing education requirement and pass the agent's licensing examination before the license will be reinstated.

(c) The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:

(1) Failure to timely respond to insurance department inquiries, including continuing education audit requests.

(2) Requesting an extension or waiver under false pretenses.

(3) Refusing to cooperate with insurance department employees in an investigation or inquiry.

(d) The Commissioner may suspend, revoke, or refuse to renew a course provider's, presenter's or instructor's authority to offer courses for any of the following causes:

(1) Advertising that a course is approved before the Commissioner has granted such approval in writing.

(2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.

(3) Presenting or using unapproved material in providing an approved course.

(4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.

(5) Preparing and distributing certificates of attendance or completion before the course has been approved.

(6) Issuing certificates of attendance or completion prior to the completion of the course.

(7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.

(8) Failing to promptly notify the Commissioner of suspected or known improper activities including attendance and attention irregularities in writing.

(9) Any violation of the North Carolina

General Statutes or Administrative Code.

(10) Failing to diligently monitor attendance and attention of attendees.

(11) Conducting classes in facilities not in compliance with the federal Americans with Disabilities Act or any similar State law or any applicable State or federal laws pertaining to safety.

(12) Presentation of course material in a manner that is factually inaccurate, communicatively faulty, or grammatically inaccurate, as based upon multiple evaluations by Department continuing education monitors, education coordinator, Deputy Commissioner of the Agent Services Division, or the Senior Deputy Commissioner of the Public Services Group.

(e) Course providers and presenters are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

(f) In addition, the Commissioner may require any one of the following upon a finding of a violation of this Section:

(1) Refunding all course tuition and fees to licensees.

(2) Providing licensees with a suitable course to replace the course that was found in violation.

(3) Withdrawal of approval of courses offered by such provider, presenter, or instructor for a period determined by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-33-130.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 12 .0561.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 8, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: To require fair computation of health insurance deductibles and co-payments when health care services are provided at discounted fees negotiated by insurers and health care providers.

Comment Procedures: Written comments may be sent to Randy Madry at 112 Cox Avenue, Raleigh, N.C. 27605. Oral presentations may be made at the public hearing. Anyone having questions should call Randy Madry at (919) 715-0194 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0500 - ACCIDENT HEALTH: GENERAL NATURE

.0561 DEDUCTIBLES AND COPAYMENTS BASED ON REAL COST

(a) As used in this Rule:

(1) "Health benefit plan" means any accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement.

(2) "Health care provider" includes any person who, under Chapter 90 of the General Statutes is licensed, registered, or certified to engage in the practice of or performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital as defined by G.S. 131E-76(3); or a nursing home as defined by G.S. 131E-101(6).

(3) "Health insurer" means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employer welfare arrangement; any preferred provider plan; and any

corporation subject to Articles 65 and 67 of this Chapter; that provides a health benefit plan.

(b) If health insurers enter into contracts with health care providers for the provision of health care services at discounted rates of payment, and applicable deductibles or copayments paid by insureds are to be based upon a percentage of the fees for services rendered, the amounts of deductibles and copayments shall be computed only on the negotiated discounted rates for the services rendered.

(c) The following are deemed to be unfair and deceptive acts and practices in the business of insurance:

(1) Attempting to settle a claim or attempting to charge or to collect or charging or collecting copayments in amounts greater than those calculated in accordance with this Rule.

(2) Attempting to pay or settle or paying or settling a claim based upon the calculation of a deductible that is not calculated in accordance with this Rule.

(3) Attempting to calculate or calculating an annual, calendar, or lifetime maximum amount payable on any amounts other than as set forth in this Rule.

(4) Attempting to settle a claim involved in coordination of benefits in any manner not in accordance with this Rule.

(5) Attempting to collect a claim against a stop-loss or excess health insurer in any manner inconsistent with this Rule.

(d) Negotiating discounts with health care providers based upon the total volume of services and that is settled on a retrospective basis in which the discounts are not attributed to individual claimants, is not deemed to be an unfair and deceptive act or practice in the business of insurance.

Statutory Authority G.S. 58-2-40; 58-50-55; 58-63-65; 58-65-1; 58-65-40; 58-65-140; 58-67-150.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 16 .0601 - .0607.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 8, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Establish standards and guidelines for health maintenance organization premium and rate filings with the Department of Insurance.

Comment Procedures: Written comments may be sent to Walter James at 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0600 - HEALTH MAINTENANCE ORGANIZATION FILINGS AND STANDARDS

.0601 DEFINITIONS

(a) The definitions contained in G.S. 58-67-5 are incorporated in this Section by reference.

(b) As used in this Section:

(1) "Adjusted community rating" means a rating method that allows an HMO to prospectively establish premium rates based upon the expected revenue requirements for individual groups and to take into account a group's historical utilization, intensity, or cost experience.

(2) "Capitated" means covered health care services are provided by an HMO, medical group, or institution based on a prepaid fixed amount per enrollee regardless of the actual value of those services.

(3) "Community rating" means a general method of establishing premiums for financing health care in which an individual's rate is based on the actual or anticipated average cost of health services used by all HMO members in a specific service area.

(4) "Community rating by class" means a modification of community rating whereby individual groups can have

different rates depending on the composition by age, gender, number of family members covered, geographic area, or industry.

(5) "Contingency reserve" means the unassigned funds held over and above any known or estimated liabilities of an HMO for the protection of its enrollees against the insolvency of the HMO.

(6) "Contract type" means a classification of members into categories usually based on enrolled dependent status, such as subscriber only, subscriber with one dependent, and subscriber with two or more dependents.

(7) "Credibility rating" means a rating method that establishes premium rates based upon the assignment of a level of credibility to an HMO group's historical utilization, intensity, or cost experience.

(8) "Fee-for-service" means payment for health care services is made on a retrospective basis based on the actual value of those services.

(9) "Full-service HMO" means an HMO that provides a comprehensive range of medical services, including hospital and physician services.

(10) "HMO expansion request" means all materials submitted for the purpose of obtaining authority to operate an HMO in a new or expanded geographic area in this State.

(11) "HMO model type" means a classification that describes the manner in which physicians are affiliated with the HMO and the contractual and payment arrangements with hospitals; and includes types such as group, network, staff, independent practice association, and point-of-service.

(12) "HMO rate filing" means an initial HMO rate filing, and HMO expansion request or an HMO rate revision filing.

(13) "HMO rate revision filing" means all materials submitted for the purpose of making a revision to an existing schedule of premiums.

(14) "Incurred loss ratio" means the ratio of total medical expenses including the change in claim reserves to total earned premium revenues.

(15) "Initial HMO rate filing" means all materials submitted for the purpose of obtaining a certificate of authority to operate an HMO in this State.

(16) "Qualified actuary" means an individual who is an Associate or Fellow of the Society of Actuaries or a Member of the American Academy of Actuaries and has at least five years of substantive experience in the managed care field.

(17) "Single-service HMO" means an HMO that provides one specific type of medical service, such as vision or dental care.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0602 HMO GENERAL FILING REQUIREMENTS

(a) All schedules of premiums for enrollee coverage for health care services and amendments to schedules of premiums that are filed with the Department shall indicate whether the filing is an original or amended filing. All data requirements prescribed by this Section must be submitted within 30 days after the date that the filing is stamped received, or the filing will be deemed to be disapproved.

(b) All filings shall be accompanied by:

(1) A certification by a qualified actuary that the premiums applicable to an enrollee are not individually determined based on the status of his health and that such premiums are established in accordance with actuarial principles for various categories of enrollees and are not excessive, inadequate, or unfairly discriminatory.

(2) Actuarial data supporting the schedule of premiums as prescribed by 11 NCAC 16 .0603, 11 NCAC 16 .0604, 11 NCAC 16 .0605 and 11 NCAC 16 .0606.

(c) All data and schedules that are required to be filed by this Section shall be filed in duplicate.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0603 HMO RATE FILING DATA REQUIREMENTS

All HMO rate filings shall include the following data:

(1) Identification and a brief description of the HMO model type.

(2) Identification of the enrollee issue basis, whether individual or group.

(3) Identification and a description of the

type of rating methodology, such as community rating, community rating by class, adjusted community rating, credibility rating, or other.

(4) Identification and listing of all rate classification factors, such as age, gender, geographic area, industry, group size, or effective date.

(5) A description and numerical demonstration of the development of the capitated rate, including a listing of sources used.

(6) A description and numerical demonstration of the development of any portion of the premium rate developed for fee-for-service claims, including a listing of sources used.

(7) A brief description of the claim reserving methodology and the incorporation of claim reserves into the premium rate.

(8) A description of the procedure and identification of the assumptions used to convert the total per member per month cost to the proposed premium rates; including assumptions for the distribution of contracts by contract type, the ratios of two-person and family rates to the single rate, and the average number of members in each contract type.

(9) The projected monthly incurred loss ratios for the period of time equal to the number of months for which the rates will be in effect, plus the number of months the rates will be guaranteed.

(10) The percentage of the per member per month premium for each loading factor, such as administration or overhead expenses, marketing, broker commissions, surplus or capital, contingency reserve, reinsurance, and profit margin.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0604 INITIAL HMO RATE FILING DATA REQUIREMENTS

All initial HMO rate filings shall include, in addition to the data required by 11 NCAC 16 .0603, the following data:

(1) A comparison of the rates to other HMO rates with the same effective date in North Carolina for similar benefit plans.

(2) A completed diskette, provided by the Actuarial Services Division of the Department, containing a three-year financial projection that details total membership, revenues and expenses, and that includes a statement of cash flow, a balance sheet, and a statement of working capital and net worth.

Statutory Authority G.S. 58-67-10(d)(1); 58-67-50(b); 58-67-150.

.0605 HMO EXPANSION REQUEST DATA REQUIREMENTS

All HMO expansion requests shall include, in addition to the data required by 11 NCAC 16 .0603, the following data:

(1) A comparison of the actual financial results, including total membership, revenues, and expenses, to the projected financial results for at least the most recent 12-month period preceding the effective date of the proposed expansion.

(2) A completed diskette, provided by the Actuarial Services Division of the Department, containing a three-year financial projection that details total membership, revenues, and expenses, and that includes a statement of cash flow, a balance sheet, and a statement of working capital and net worth for both the existing service area and the proposed area of expansion.

Statutory Authority G.S. 58-67-10(d)(1); 58-67-50(b); 58-67-150.

.0606 HMO RATE REVISION FILING DATA REQUIREMENTS

All HMO rate revision filings shall include, in addition to the data required by 11 NCAC 16 .0603, the following data:

(1) The scope and reason for any rate revision including a brief description of the methodology employed to determine the revised rates, such as budgetary or cost method, fee-for-service method, or other.

(2) The number of months the rates will be in effect and the number of months the rates will be guaranteed.

(3) The dates and percentage amounts of all prior and requested rate revisions in North Carolina; and quarterly rate increases shall be shown in comparison to both the immediately preceding quarter and the corresponding quarter of the previous 12-month period.

(4) The North Carolina average annual per member per month premium revenue before and after the rate revision.

(5) Identification of any actual versus expected utilization rates or medical costs that may be used to justify a premium rate revision.

(6) Identification, justification, and derivation of any trend factor used to project medical expenses.

(7) A comparison of the actual financial results, including total membership, revenues, and expenses, to the projected financial results for at least the most recent 12-month period preceding the effective date of the revised rates.

(8) A completed diskette, provided by the Actuarial Services Division of the Department, that contains a financial projection for the period of time equal to the number of months the rates will be in effect plus the number of months the rates will be guaranteed, that details total membership, revenues, and expenses, and that includes a statement of cash flow, a balance sheet, and a statement of working capital and net worth.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0607 HMO INCURRED LOSS RATIO STANDARDS

(a) The following apply to all HMO rate revision filings:

(1) Premium rates are deemed to be inadequate if any of the monthly incurred loss ratios projected for North Carolina over the period required by 11 NCAC 16 .0606(8) are greater than:

(A) 85.0% for a full-service HMO issued on a group basis.

(B) 75.0% for a single-service HMO issued on a group basis.

(C) 75.0% for a full-service HMO issued on an individual basis.

(D) 65.0% for a single-service HMO issued on an individual basis.

(2) Premium rates are deemed to be excessive if any of the monthly incurred loss ratios projected for North Carolina over the period required by 11 NCAC 16 .0606(8) are less than:

(A) 80.0% for a full-service HMO issued on a group basis.

(B) 70.0% for a single-service HMO issued on a group basis.

(C) 70.0% for a full-service HMO issued on an individual basis.

(D) 60.0% for a single-service HMO issued on an individual basis.

(b) The following apply to all initial HMO rate filings and HMO expansion requests:

(1) Premium rates are deemed to be inadequate if any of the monthly incurred loss ratios projected for North Carolina over the last 12 months of the three year financial projection are greater than:

(A) 85.0% for a full-service HMO issued on a group basis.

(B) 75.0% for a single-service HMO issued on a group basis.

(C) 75.0% for a full-service HMO issued on an individual basis.

(D) 65.0% for a single-service HMO issued on an individual basis.

(2) Premium rates are deemed to be excessive if any of the monthly incurred loss ratios projected for North Carolina over the last 12 months of the three year financial projection are less than:

(A) 80.0% for a full-service HMO issued on a group basis.

(B) 70.0% for a single-service HMO issued on a group basis.

(C) 70.0% for a full-service HMO issued on an individual basis.

(D) 60.0% for a single-service HMO issued on an individual basis.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend rule cited as 12 NCAC 10B .2105.

The proposed effective date of this action is January 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person interested in this proposed rule amendment may demand a Public Rule-Making Hearing by submitting a written request for such hearing to the Commission within 15 days of

publication of this notice. This request should be directed to Joan Neuner, Director, at the address listed below.

Reason for Proposed Action: The Commission has previously filed this rule, making modifications to .2105(a). The staff noted after the rule-making hearing that an oversight was made in that we failed to modify .2105(b) to be consistent with the changes in .2105(a). We are therefore filing to make this minor technical change to remove the "30 day" requirement from .2105(b).

Comment Procedures: Any person interested in this proposed rule amendment may present written comments relevant to the proposed action to the Commission by November 14, 1994. Written comments should be directed to Joan Neuner, Director, at the address listed below. This proposed rule amendment is available for public inspection and copies may be obtained at the following address: Sheriffs' Standards Division, N.C. Dept. of Justice, P.O. Drawer 629, Raleigh, NC 27602.

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .2100 - JUSTICE OFFICERS' FIREARMS IN-SERVICE TRAINING REQUALIFICATION PROGRAM

.2105 FAILURE TO QUALIFY

(a) Justice officers who fail to qualify pursuant to Rule .2104 shall immediately surrender their weapons to the sheriff, upon his request, and shall have 30 days in which to obtain the qualification score required in 12 NCAC 10B .2104.

(b) Failure to qualify within the ~~30-day~~ time period allowed in 12 NCAC 10B .2105(a) will result in the summary suspension of the justice officer's certification by the Commission.

(c) No justice officer summarily suspended under Paragraph (b) of this Rule and in compliance with 12 NCAC 10B .0206(a)(3) may work as a certified justice officer until:

(1) the sheriff forwards to the Commission documentary evidence verifying that the officer has complied with the requirements of 12 NCAC 10B .2103 and .2104; and

(2) the justice officer and the sheriff receive from the Commission documentation that the Commission has terminated the suspension and reinstated the certification to the justice officer.

(d) Any justice officer previously unauthorized to carry a weapon but whose status changed to "authorized to carry a weapon," must comply with the provisions set out in 12 NCAC 10B .2103 and .2104; and may not carry a firearm until:

(1) the sheriff forwards to the Commission documentary evidence verifying that the officer has complied with the requirements of 12 NCAC 10B .2103 and .2104; and

(2) the justice officer and the sheriff receive from the Commission documentation that the Commission has amended the officer's status to "authorized to carry a weapon" and all certification files reflect the same.

Statutory Authority G.S. 17E-4; 17E-7.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend rules cited as 13 NCAC 13 .0101, .0201 - .0213, .0301 - .0304, .0306, .0401 - .0403, .0405 - .0406, .0409 - .0410, .0413 - .0416, .0421, .0501, .0504, .0801, .0803 - .0805, .0807 - .0809, .0812 - .0813, .0815; adopt .0103, .0305, .0404, .0407 - .0408, .0411, .0420; repeal .0502 - .0503, .0601 - .0609, .0810, .0814 and .0816.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 9:30 a.m. on November 3, 1994 at the NC Department of Agriculture Bldg., Room 359, 1 W. Edenton Street, Raleigh, NC 27601.

Reason for Proposed Action: To update the Uniform Boiler and Pressure Vessel Regulations. The N.C. Department of Labor is submitting

proposed rules regarding the Uniform Boiler and Pressure Vessel Act. As part of the process of revising these rules, the Department proposes a rearrangement of the numbers in certain sections. This proposal is made for purposes of clarifying the rules. The proposed changes are mainly reflected in Section .0400 with one such change in Section .0300.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Dept of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 733-6197; Telephone (919) 733-0368 by November 14, 1994. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

CHAPTER 13 - BOILER AND PRESSURE VESSEL

SECTION .0100 - DEFINITIONS

.0101 DEFINITIONS

The following definitions are applicable throughout this Chapter:

(1) ~~(2)~~"Appurtenance" means any control, fitting, appliance or device attached to or working in conjunction with the boiler or pressure vessel proper. ~~NOTE: The term "appurtenance" is used in Section III of the ASME Code (Nuclear) in a manner different from the definition herein. Section III is incorporated into these Rules by reference (see Rule .0401). When construing the provisions of Section III, apply the special use of the term therein.~~

(2) ~~(1)~~"ASME Code" means all sections of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers that have been adopted by the Boiler and Pressure Vessel Division.

(3) "Audit" means activities performed by the Director, his designee, or a deputy inspector other than those identified as inspections, including:

(a) reviews and surveys for ASME and National Board stamp issuance and renewal;

(b) audits performed on an inspector at the location of a manufacturer or repair organization as may be required by the ASME Code, National Board Inspection Code, or National Board Rules and Regulations; and

(c) audits pursuant to evaluation for the issuance of North Carolina Specials.

(4) "Automatically fired boiler" means a boiler which does not require a constant attendant for the purpose of introducing fuel into the combustion chamber.

(5) ~~(3)~~"Authorized inspection agency" means ~~one of~~ an organization employing inspectors holding valid North Carolina Commissions and National Board Commissions, including the following:

(a) ~~a department or division established by a state, commonwealth, or municipality of the United States, or a province of Canada, which has adopted one or more sections of the ASME Code (of which one shall be Section I) and whose inspectors hold valid commissions with the National Board of Boiler and Pressure Vessel Inspectors;~~ the Department of Labor;

(b) an inspection agency of an insurance company licensed to write boiler and pressure vessel insurance ~~and whose inspectors hold valid North Carolina commissions~~; or

(c) an owner-user inspection agency that meets the requirements of G.S. 95-69.15.

(6) "Board" means the North Carolina Board of Boiler and Pressure Vessel Rules.

(7) ~~(4)~~"Boiler," as defined in G.S. 95-69.9(b), includes the following types of boilers:

(a) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig and includes a ~~high-pressure,~~ high-temperature water boiler ~~and an unfired steam boiler;~~

~~(b) "High-pressure, high-temperature water boiler" means a water boiler~~ operating at pressures exceeding 160 psig or temperatures exceeding 250°F or both at or near the boiler outlet;

~~(c) "Unfired steam boiler" means an unfired pressure vessel in which steam pressure is generated by the application of heat from an indirect source;~~

(b) ~~(d)~~"Heating boiler" means:

(i) a steam boiler operated at pressures not exceeding 15 psig~~,~~; or

(ii) a hot water heating boiler operated at pressures not exceeding 160 psig and

temperatures not exceeding 250°F, at or near the boiler ~~outlet; and~~ outlet, and supplying heated water, normally used for building heat applications (hydronic boiler), in which water is returned to the boiler from the piping system;

(iii) ~~(c)~~ a~~"Hot~~ hot water supply ~~or storage vessel~~ boiler~~"~~ ~~means a boiler or indirectly fired pressure vessel completely filled with water~~ that furnishes hot water to be used externally to itself (domestic water boiler) at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the hot water ~~outlet.~~ outlet; and

(iv) a potable hot water heater operating at pressures not exceeding 160 psig and temperatures not exceeding 210°F, at or near the boiler outlet, and supplying water intended for potable use only.

(c) "Steam boiler" means a power boiler or heating boiler which generates steam or other vapor within the internal mechanism or at the boiler outlet during operation;

(d) "Water boiler" means a power boiler or heating boiler which does not produce steam or other vapor during operation. The term water boiler also applies to boilers heating liquids other than water which do not create a vapor during operation.

(8) "Boiler blowoff" means that system associated with the rapid draining of boiler water to remove concentrated solids which have accumulated as a natural result of steam generation. This term also applies to the blowoff for other boiler appurtenances, such as the low-water fuel cutoff.

(9) ~~(5)~~"Boiler or pressure vessel proper" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:

(a) the first circumferential joint for welded end connections;

(b) the face of the first flange in bolted flange connections; or

(c) the first threaded joint in threaded connections.

Note: Superheaters, economizers and other pressure parts connected directly to the boiler or pressure vessel without intervening valves are part of the boiler or pressure vessel proper.

(10) ~~(7)~~"Certificate inspection" means an inspection, the report of which is used by the Director as justification for issuing, withholding or revoking the inspection certificate~~, and may consist of an internal or a general inspection~~. The term certificate inspection also applies to the external inspection performed in accordance with these Rules whether or not a certificate is intended to be issued as a result of the inspection.

(11) ~~(6)~~"Certificate of competency" means the certificate issued to a person who has passed the inspector's examination given by the Board ~~of Boiler and Pressure Vessel Rules~~ and who is employed by an Authorized Inspection Agency.

(12) "Commissioner" means the Commissioner of the North Carolina Department of Labor.

(13) ~~(10)~~"Condemned boiler or pressure vessel" means a boiler or pressure vessel:

(a) that has been found not to comply with G.S. Chapter 95, Article 7A, and/or these Rules;

(b) that constitutes a menace to public safety; and

(c) that cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and these Rules.

(14) "Coil type water tube boiler" means a boiler having no steam space, such as a steam drum, whereby the heat transfer portion of the water containing space consists only of a coil of pipe or tubing.

(15) "Deputy inspector" means a boiler and pressure vessel inspector employed by the Division.

(16) ~~(11)~~"Design criteria" means ASME and ~~divisional~~ Divisional requirements relating to the mode of design and construction of a boiler or pressure vessel.

~~(17) "Factor of safety" means the ratio of allowable stress to strength.~~

(17) ~~(12)~~"Division" means the Boiler and Pressure Vessel Division of the North Carolina Department of Labor.

(18) ~~(13)~~"External inspection" means an inspection of the external surfaces and appurtenances of a ~~power~~ boiler or pressure vessel ~~while it is in operation~~. An external inspection may entail the "shut-

ting down" of a boiler or pressure vessel while it is in operation, including inspection of internal surfaces, if the inspector determines this action is warranted.

(19) "Hydropneumatic storage tank" means a pressure vessel used for storage of water at ambient temperature and where a cushion of air is contained within the vessel.

(20) "Imminent danger" means any condition or practice in any location that a boiler or pressure vessel is being operated which is such that a danger exists, and which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by these Rules.

(21) "Inspector" means an inspector in possession of a valid North Carolina Commission and a National Board Commission including a deputy inspector, an insurance inspector, or an owner/user inspector.

(22) "Insurance inspector" means the special inspector employed by an Insurance Company, and holding a valid North Carolina Commission and National Board Commission.

(23) ~~(15)~~"Internal inspection" means as complete an examination as can reasonably be made of the internal and external surfaces and appurtenances of a power boiler while it is shut down.

(24) "Maximum allowable working pressure" means the lesser of the maximum allowable working pressure as determined by the manufacturer in accordance with the requirements of the ASME code, or as determined by the Director in accordance with these Rules.

(25) ~~(18)~~"Menace to public safety" means a boiler or pressure vessel that cannot be operated without a substantial risk of injury to persons and property.

(26) "Miniature boiler" means a boiler which does not exceed any of the following:

(a) 16 inch inside shell diameter;

(b) 20 square feet of heating surface (does not apply to electrically fired boilers);

(c) 5 cubic feet volume; and

(d) 100 psi maximum allowable working pressure.

(27) ~~(19)~~"National Board" means The National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the ASME Code.

(28) ~~(8)"Commission, National Board~~ "National Board Commission" means the commission issued by the National Board to a holder of a certificate of competency who ~~desires to make shop inspections or field inspections in accordance with the National Board bylaws and whose employer submits the inspector's application to the national board for such commission~~ has fulfilled the requirements of the National Board and who is in the full time employ of an Authorized Inspection Agency.

(29) ~~(20)~~"National Board Inspection Code" means the inspection handbook published by the National Board, as adopted by the ~~division~~ Division.

(30) ~~(16)~~"Nonstandard boiler or pressure vessel" means:

(a) power boilers contracted for or installed before December 7, 1935;

(b) heating boilers contracted for or installed before January 1, 1951;

(c) pressure vessels contracted for or installed before January 1, 1976;

(d) ~~non ASME Code constructed~~ hydropneumatic storage tanks containing water under pressure at ambient temperatures contracted for or installed before January 1, 1986; ~~and~~

(e) ~~unfired pressure vessels used in air conditioning/refrigeration systems operated entirely full of water or other liquid which is not materially more hazardous water contracted for or installed before July 1, 1985, provided the owner or user has registered the vessel with the division prior February 28, 1987, and the manufacturer of such vessel provides an extended warranty or similar protection when the Commissioner determines that such vessel may be operated without serious threat to life or property. At the time the owner or user registers the vessel he shall provide full documentation regarding the date the vessel was contracted for, the date the vessel was installed, the~~

~~age of the vessel, the date the owner or user accepted the vessel, a copy of any insurance policy covering the vessel and a full explanation of the location of the vessel including its proximity to electric wiring or conduits and an analysis of any possible damage or injury to persons or property that would occur should the vessel rupture. Following such registration and application, the Commissioner shall make his decision concerning the type of warranty or similar protection that will be required within 30 days immediately following the receipt of the registration and application.~~ boilers or pressure vessels for which the ASME Code is not intended to apply, other than those boilers and pressure vessels to which the term North Carolina Special applies; and

~~NOTE: This classification includes ASME Code constructed boiler and pressure vessels installed or contracted for prior to the enactment of applicable legislation regulating its use.~~

(f) hydropneumatic storage tanks installed at a distance of not less than 250 feet from a building of public assembly, apartment house, or residence, and provided with overpressure protection.

(31) "Normal working hours" means between the hours of 6:00 AM and 8:00 PM, Monday through Friday, except for state recognized holidays.

(32) ~~(9)"Commission, North Carolina~~ "North Carolina Commission" means the commission card issued by the Board, to holders of ~~certificates of competency~~ a National Board Commission, authorizing them to conduct ~~shop and field~~ inspections in this State.

(33) "NPS" means nominal pipe size.

(34) ~~(21)~~"Nuclear energy system" means ~~and refers to~~ any closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof under pressure or vacuum for use externally to itself by the direct application of heat from nuclear energy and associated components, vessels, piping systems, pumps, valves, storage tanks, and ~~appurtenances, as "appurtenances" is used in Section III of ASME Code.~~ appurtenances.

(35) "Operating pressure" means the pressure of the lowest set safety valve installed on the boiler or pressure vessel.

(36) ~~(22)~~"Owner or user" means any person or legal entity responsible for the ~~safe~~ operation of any boiler or pressure vessel installed in this State. This term shall also apply to a contractor, installer, or agent of the owner or user, as applicable.

(37) ~~(23)~~"Pressure piping" means piping including welded piping, external to power boilers from the boiler proper to the required stop valve(s).

(38) ~~(24)~~"Pressure vessel proper"; see boiler or pressure vessel proper.

(39) ~~(25)~~"PSIG" means pounds per square inch gauge.

(40) ~~(14)"General inspection" means as complete an examination as can reasonably be made of the internal and external surfaces and appurtenances of a heating boiler or pressure vessel preferably while it is in operation. A general inspection may entail the "shutting down" of a heating boiler or pressure vessel for a closer examination if an authorized inspector feels this action is warranted.~~ "Reinspection" means as complete an examination as is necessary to verify that any repair or corrective action required as a result of a certificate inspection is completed.

(41) "Safety valve" means any safety valve, safety relief valve, pressure relief valve, or non-reclosing device intended to prevent overpressurization of a boiler or pressure vessel.

(42) ~~(26)~~"Shop inspection" means an inspection performed by ~~a state~~ an inspector pursuant to an inspection service agreement whereby the fabrication process ~~for a boiler or pressure vessel is inspected.~~ or the repair or alteration of a boiler or pressure vessel is observed to ensure compliance with ASME and the National Board.

(43) ~~(27)~~"Special inspection" means any inspection performed by ~~the state~~ a deputy inspector other than a regularly scheduled inspection ~~and includes instances where the original inspection was rescheduled due to the owner's or user's failure to prepare the boiler or pressure vessel after notification~~. Special inspection also includes the performance of an inspection by a deputy inspector which requires that the inspector make a special trip to meet

the needs of the individual or organization requesting the inspection, including performing certificate inspections during hours other than normal working hours, and inspection of field repairs and alterations.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0103 INCORPORATED STANDARDS

The following standards are incorporated by reference elsewhere in these Rules. These standards are available for public inspection at the office of the Director and may be purchased at the address in this Rule. The prices listed in this Rule reflect the price as of the date of adoption of this Rule. For current prices, the organization listed in this Rule should be contacted.

(1) National Board Inspection Code (NBIC)
National Board of Boiler and Pressure Vessel Inspectors,
1055 Crupper Avenue, Columbus, Ohio 43229
phone number: (614) 888-8320
cost: fifty dollars ($50.00).

(2) American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code
American Society of Mechanical Engineers, United Engineering Center, PO Box 3199, Grand Central Station, New York, New York 10163
phone number: 1-800-THE-ASME.
cost: four thousand seven hundred and fifty three dollars ($4,753.00).

(3) North Carolina State Building Code
North Carolina Department of Insurance, Code Council Section, PO Box 26387, Raleigh, NC 27611
phone number: (919) 733-3901
cost: two hundred and fifty dollars ($250.00).

Statutory Authority G.S. 95-69.11; 95-69.14.

SECTION .0200 - ADMINISTRATION

.0201 NAME: ADDRESS

(a) The Boiler and Pressure Vessel Division, which administers the provisions of Article 7A of G.S. Chapter 95, is located in the Raleigh office of the department on the corner of Edenton and Salisbury Streets.

(b) Address correspondence to:
Boiler and Pressure Vessel Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601
Telephone (919) 733-2383
Fax (919) ~~733-6197~~ 733-0917.

Statutory Authority G.S. 95-4; 95-69.12.

.0202 INSPECTOR QUALIFICATION

(a) ~~Applicants for a certificate of competency shall satisfy the requirements of G.S. 95-69.15(c).~~ Inspectors performing certificate inspections shall be in possession of a valid North Carolina Commission and National Board Commission. Inspectors performing nuclear inservice inspection shall be in possession of a valid North Carolina Commission and shall meet the additional requirements of the ASME Code and the National Board, including possession of the applicable endorsements to the National Board Commission.

(b) A Certificate of Competency shall be issued to an inspector who satisfactorily passes an examination written and graded by the National Board and administered by the Board. The Certificate of Competency authorizes an individual to apply to the National Board for a National Board Commission. In order to take the ~~North Carolina Board of Boiler and Pressure Vessel Rules'~~ examination [see G.S. 95-69.15(c)(1)], an applicant shall meet one of the following qualifications:

(1) a degree in mechanical engineering plus one year of experience in design, construction, operation, or inspection of high-pressure boilers and pressure vessels;

(2) a degree in a branch of engineering, other than mechanical engineering plus two years of experience in construction, operation, or inspection of high-pressure boilers and pressure vessels; or

(3) the equivalent of a high school education plus three years experience:
(A) in high-pressure boiler and pressure vessel construction or repair;
(B) as an operating engineer in charge of high-pressure boiler operations; or
(C) as an inspector of high-pressure boilers and pressure vessels.

(c) Applications for the examination are available from the ~~director and~~ Director. Completed applications shall contain an accurate educational and employment history.

(d) The ~~Board of Boiler and Pressure Vessel~~

~~Rules'~~ examination ~~is prepared and graded by the National Board and~~:

(1) covers the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances;

(2) is given on the first Wednesday and one-half day Thursday in March, June, September, and December at a site selected by the ~~director; and~~ Director, provided that a minimum of four applicants are registered; and

(3) is administered upon payment to the Department of Labor of a fee of ~~thirty-five dollars ($35.00)~~ fifty dollars ($50.00) which is also required when the examination is retaken by an unsuccessful applicant.

(e) ~~Successful applicants will be issued certificates of competency by the board, signed by the chairperson of the board and the director, when employed by an authorized inspection agency.~~ A grade of 70 percent or greater must be attained to achieve a passing grade on the examination.

(f) When requested by the employing Authorized Inspection Agency, a North Carolina Commission, bearing the signature of the chairperson of the Board, shall be issued to persons holding a valid National Board Commission, upon payment of the applicable fee.

Statutory Authority G.S. 95-69.11; 95-69.15.

.0203 NORTH CAROLINA COMMISSION

(a) When requested by the employer, a North Carolina ~~commission card~~ Commission, bearing the ~~signatures~~ signature of the chairperson of the board ~~and director~~, will be issued by the ~~board~~ Board to persons ~~meeting the qualifications in G.S. 95-69.15(a) and G.S. 95-69.15(c)~~ holding a valid National Board Commission.

(b) Requests for a North Carolina ~~commission card~~ Commission are processed upon proof of a ~~certificate of competency~~ National Board Commission ~~issued by the National Board~~ and payment of a ~~ten dollar ($10.00) fee~~ fifteen dollar ($15.00) fee to the Department of Labor.

(c) North Carolina ~~commission cards~~ Commissions are valid through December 31, at which time ~~each inspector~~ the inspector's employer shall submit a renewal application and a ~~ten dollar ($10.00) fee~~ fifteen dollar ($15.00) fee to the Department of Labor.

(d) The North Carolina ~~commission card~~ Commission shall be returned by the inspector to the ~~division~~ Division upon termination of employment.

(e) A North Carolina ~~commission~~ Commission may be suspended or revoked by the board, in accordance with G.S. 95-69.17 for incompetence, untrustworthiness or ~~willful~~ falsification of any statement in an application or inspection report. The Board shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the Board determines that the public health, safety or welfare requires this action. In this case, the proceedings will be promptly commenced and determined. The Board's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care ordinarily possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not determinative. Failure to perform the inspections in accordance with these rules shall constitute incompetence. The inspector will be given the opportunity to show that he is performing his duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Board is not warranted, he shall file for a judicial hearing pursuant to Article 4 of G.S. 150B.

Statutory Authority G.S. 95-69.11; 95-69.15.

.0204 CONFLICT OF INTEREST

An inspector shall not engage in any profit-making enterprise relating to boilers, pressure vessels, nuclear energy systems, or their appurtenances, aside from his or her regular employment as an inspector nor engage in ~~or~~ any conduct that would otherwise constitute a conflict of interest.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0205 OWNER-USER INSPECTION AGENCY

(a) A company seeking to ~~institute an owner-user inspection agency~~ perform inspections of its own boilers and pressure vessels shall file an application with the ~~director~~ Director and obtain approval from the Board ~~of Boiler and Pressure Vessel Rules~~.

(b) The company shall, in its application, designate ~~an experienced technician or~~ a supervisor

who shall be a registered professional engineer within its employ ~~as its inspector supervisor~~, who, upon approval of the application, shall:

(1) ascertain that the company's inspectors, pursuant to Rules .0202 and .0203 are issued certificates of competency and owner-user commission cards;

(2) supervise inspections of boilers and pressure vessels and see that an inspection report, signed by the owner-user inspector, is filed at the equipment site;

(3) promptly notify the ~~director~~ Director of any unsafe boiler or pressure vessel which presents a condition of imminent danger;

(4) maintain a master file of inspection records which shall be made available for examination by the Director or his representative during business hours:

(A) identifying each boiler and pressure vessel by serial number and abbreviated description; and

(B) showing the date of the last and next scheduled inspection; ~~and~~

~~(C) made available for examination by the director or his representative during business hours; and~~

(5) ~~file,~~ on a date mutually agreed upon with the ~~director~~ Director, file an annual statement signed by the ~~supervising inspector~~ supervisor, showing the number of pressure vessels and certifying that each inspection was performed pursuant to these Rules, accompanied by a filing fee of fifteen dollars ($15.00) per vessel.

(c) Inspection certificates are not required for boilers and pressure vessels inspected under an owner-user program.

Statutory Authority G.S. 95-69.11; 95-69.15.

.0206 OWNER OR USER TO NOTIFY DIRECTOR OF ACCIDENT

(a) When an accident renders a boiler, pressure vessel, or nuclear energy system inoperative, or causes damage to property, personal injury, or death, the owner or user shall immediately notify the ~~director~~ Director ~~in writing~~ by the most expedient means available. This notification shall be followed by a detailed written description ~~and describe the accident in detail~~.

~~(b) In case of a serious accident involving personal injury or explosion, the owner or user shall immediately notify the director by telephone or telegraph.~~

~~(c)~~(b) No person shall remove or disturb the boiler, pressure vessel, or nuclear energy system, or any of its parts, before an ~~authorized inspection~~ investigation by the Director has been made, except for the purpose of conserving life or limiting consequential damages.

(c) Insurance inspectors who elect to investigate an accident may do so after the Director has concluded his investigation. Any insurance inspector who elects to investigate an accident shall submit an accident report to the Director within 10 days of the completion of the investigation.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0207 INSPECTION REPORTS

~~Special~~ Inspectors shall file:

(1) inspection reports with the ~~director~~ Director within ~~30~~ 10 days after each certificate inspection; and

(2) inspection reports with the ~~director~~ Director regarding all ~~hazardous~~ conditions of imminent danger, or any condition that would result in the insurance company's refusal to issue or continue an insurance policy on the boiler, pressure vessel, or nuclear energy system, immediately.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0208 INSURANCE COMPANIES TO NOTIFY DIRECTOR

(a) All insurance companies shall notify the ~~director~~ Director by reference to the applicable North Carolina serial number and owner/user's name and address within ~~30~~ 10 days regarding actions taken on all boiler, pressure vessel, or nuclear installation risks, including but not limited to:

(1) the issuance of a policy;

(2) the cancellation of a policy; ~~or~~

(3) the non-renewal or suspension of a policy because of unsafe conditions; or

(4) removal of a boiler or pressure vessel from service.

(b) Should the inspector, during the course of making an inspection, find a condition of imminent danger, he shall immediately notify the Director by telephone or fax in order that steps might be taken to remove the vessel from service.

(c) The inspector shall notify the Director

immediately upon becoming aware of an accident which renders a boiler, pressure vessel, or nuclear energy system inoperative or causes damage to property, personal injury, or death.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0209 CONTRACTORS TO NOTIFY DIRECTOR

All contractors installing boilers or pressure vessels ~~in any public building or in an apartment house of six families or more~~ subject to inspection in accordance with these Rules shall ~~report the installation within 30 days to the director.~~ notify the Director and request a certificate inspection not less than 30 days prior to placing equipment in operation. Equipment shall not be operated prior to the owner or user obtaining an inspection certificate. Payment of the initial inspection fee shall be the responsibility of the requesting contractor.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0210 SHOP INSPECTION AND NATIONAL BOARD R STAMP QUALIFICATION AUDITS

(a) Manufacturers seeking to employ ~~state~~ deputy inspectors to inspect their fabrication process for boilers, pressure vessels, and nuclear energy system components, pursuant to the ASME ~~Code~~ Code, shall enter into a written agreement with the North Carolina Department of Labor for this purpose.

(b) The Department of Labor shall perform the qualification audit for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as modified herein.

(c) The Department of Labor shall not perform the qualification audit for those individuals or organizations for which the Department of Labor provides inspection services, for those individuals and organizations in possession of or concurrently applying for an ASME Code symbol stamp, or for those individuals or organizations which specifically request the audit be performed by the National Board.

(d) An audit to be performed by the Department will be scheduled upon receipt of request by the National Board. Payment of the fee as required in Rule .0213 of this Section shall be the responsibility of the individual or organization being audited. Should an applicant not be successful in obtaining accreditation, the applicable fee shall be paid before a new audit is performed.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0211 CERTIFICATE INSPECTIONS

(a) An ~~authorized~~ inspector shall inspect all boilers and pressure vessels at the time of installation and at regular intervals thereafter, as provided in this Rule.

(b) Subject to the exceptions in Paragraphs (c) and (d) of this Rule, and after seven days notice is given to the owner or user, an ~~authorized~~ inspector shall conduct an internal inspection for a power boiler at the time of installation and annually thereafter. ~~Six~~ Three to nine months after the internal inspection, an external inspection shall be performed. Issuance of the inspection certificate shall be based on the results of the internal inspection.

(c) In place of the first internal inspection for a new power boiler being placed into service ~~for the first time~~, an inspector may conduct ~~a general~~ an external inspection if the inspector ~~feels~~ determines that data sufficient to determine compliance with ~~the rules of this Chapter~~ these Rules can be gathered from ~~a general~~ an external inspection.

(d) Miniature ~~boilers and~~ boilers, coil-type watertube ~~boilers~~ boilers, and boilers heating a fluid other than water which do not produce steam or vapor operating as power boilers shall undergo ~~a general~~ an external inspection annually. Miniature ~~boilers and~~ boilers, coil-type watertube boilers and boilers heating a fluid other than water operating as heating boilers shall undergo ~~a general~~ an external inspection biennially.

(e) Heating boilers and pressure vessels, except hydropneumatic storage tanks, shall undergo ~~a general~~ an external inspection biennially.

(f) Owner-user inspectors shall conduct inspections for boilers and pressure vessels as prescribed in this Rule.

~~(g) Boiler and pressure vessel components of nuclear energy systems shall be inspected pursuant to Section XI of the ASME Code.~~

~~(h)~~(g) ~~Authorized inspectors~~ Inspectors may order coverings removed, internal inspections, external inspections, control and safety device testing or calibration, or pressure tests whenever conditions warrant further evaluation of a boiler, pressure vessel, or nuclear energy system.

(h) Hydropneumatic storage tanks shall undergo an external inspection every five years, except that hydropneumatic storage tanks installed at a distance of not less than 250 feet from a building of public assembly or apartment house need not be

inspected, nor receive an inspection certificate.

(i) When the inspector or Director determines that a certificate can not be issued as a result of an inspection, the boiler or pressure vessel shall be reinspected after the necessary repairs are made.

(j) Inspections shall be performed in accordance with the National Board Inspection Code, Chapter II, Inspection of Boilers and Pressure Vessels, 1992 edition, including subsequent amendments and editions, which is hereby incorporated by reference. The inspector may require controls and safety devices to be disassembled, tested, checked or calibrated as necessary to ensure their proper operation.

(k) The Director may consider extending an existing inspection certificate for a power boiler for a period not exceeding 60 days beyond the certificate expiration date, should an inspection at the specified period result in undue hardship for the owner or user. The owner or user shall submit a written request to extend an existing inspection certificate, providing justification for an extension. The request shall include a report from a commissioned inspector of an external inspection which shall have been performed no earlier than 60 days before the certificate expiration date, and the inspection report shall include a recommendation from the inspector for an extension to the inspection certificate.

(l) The inspection frequency established by this Rule may be modified by the Director for individual boilers and pressure vessels if the Director determines that due to unique conditions, the frequency established herein is not appropriate, and that the safety attained by the normal inspection frequency will be otherwise obtained.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0212 PREPARATION FOR INSPECTION

(a) The owner or user shall prepare a power boiler for internal inspection by:

(1) cooling the boiler, furnace, and setting so as to prevent damage to any part;

(2) draining and washing thoroughly internal parts to be ~~inspected;~~ inspected, including disassembly and cleaning of float bowl type low-water fuel cutoff devices and associated piping plugs or caps;

(3) removing wash-out, drain, and inspection plugs;

(4) removing enough of the grates in an internally fired boiler to permit inspection;

(5) removing enough brickwork, refractory, and insulation to permit inspection;

(6) removing manhole and handhole plates;

(7) preparing the controls and safety devices for inspection and testing; ~~and~~

(8) preventing leakage of water, steam, or vapors into boiler interiors that would endanger ~~personnel.~~ personnel;

(9) providing adequate ventilation to prevent the accumulation of hazardous gasses; and

(10) providing, when required, a competent person, as defined under the North Carolina Occupational Safety & Health standard for confined spaces, to assist the inspector in the performance of his inspection.

(b) In addition to the requirements in Paragraph (a) of this Rule, the owner or user shall prepare a power boiler that has a manhole and which is connected to a common header with another boiler for internal inspection by:

(1) closing and tagging, or padlocking, the nonreturn and steam stop valves and opening all drain valves or cocks located between the nonreturn and steam stop valves;

(2) closing and tagging, or padlocking, the feed and check valves and opening all drain valves or cocks located between the feed and check valves;

(3) draining boiler and then closing and padlocking the blowoff valves;

(4) disconnecting, at the request of the inspector, blowoff lines between pressure parts and valves;

(5) opening all drains and vent lines; and

(6) after complying with all other provisions of Rule .0212, ~~open~~ opening the manhole covers.

(c) ~~The owner or user shall prepare a heating boiler, water tube coiled type boiler, miniature boiler, or pressure vessel which is required by the inspector to be inspected internally by:~~

~~(1) removing manhole and handhole plates, as well as cleaning and inspection plugs;~~

~~(2) cleaning internal surfaces and adequately ventilating all interior spaces;~~

~~(3) isolating the unit to the extent that internal temperature, pressure, and environment are not injurious to personnel and are under strict control;~~

~~(4) removing linings or coverings as directed by the inspector upon his or her arrival; and~~

~~(5) preparing pressure gauges for inspection or testing.~~ The owner or user need not make any special preparation for an external inspection of a boiler or pressure vessel, except that if the inspector requires the boiler or pressure vessel to be shut down for a closer inspection, the boiler or pressure vessel shall be prepared as is required for the internal inspection of a power boiler.

Statutory Authority G.S. 95-69.11.

.0213 FEES

(a) ~~An eighteen dollar ($18.00)~~ A twenty dollar ($20.00) certificate and processing fee for each boiler or pressure vessel inspected by ~~a Special~~ an Insurance Inspector and found to be in compliance with these Rules shall be paid to the North Carolina Department of Labor.

(b) An inspection and certificate fee shall be paid to the North Carolina Department of Labor for each boiler or pressure vessel inspected by ~~the State.~~ a deputy inspector as follows:

(1) ~~General~~ External Inspection ~~[.0101(14)]~~
  (A) ~~vessel entry not required~~ pressure vessels - $25.00;
  (B) ~~vessel entry required~~ boilers - $35.00.

~~(2) External Inspection [.0101(13)] - $25.00;~~

(2) ~~(3)~~Internal Inspection ~~[.0101(15)]~~
  (A) vessel entry not required - ~~$35.00~~ $50.00;
  (B) vessel entry required - $100.00.
    ~~(i) if heating surface is less than 3,000 sq. ft. - $80.00;~~
    ~~(ii) if heating surface is 3,000 sq. ft. or more - $100.00;~~

(3) Inspections performed outside of normal working hours shall be considered special inspections and the applicable fees shall apply, including the fee for working outside of normal working hours.

(c) A fee of ~~fifty dollars ($50.00)~~ sixty dollars ($60.00) per hour, including travel time, plus expenses including travel, hotel and meals shall be paid to the North Carolina Department of Labor for each special inspection [.0101(27)]. ~~The fee for special inspections performed outside of normal working hours is computed at the shop rate.~~

(d) A fee of ~~one hundred eighty five dollars ($185.00)~~ two hundred forty dollars ($240.00) per one-half day (four hours) or any part of one-half day or ~~three hundred dollars ($300.00)~~ four hundred dollars ($400.00) for one day (four to eight hours) ~~or one thousand four hundred dollars ($1400.00) per week (36 to 40 hours),~~ plus, in either case, all expenses including travel hotel, and meals shall be paid to the North Carolina Department of Labor for each shop inspection [.0101(26)]. ~~This fee does not include the regular fee for inspection when the boiler or pressure vessel is installed. Shop inspections performed outside of normal working hours shall be computed at one and one half times the normal rate plus expenses. Normal working hours shall be between the hours of 6:00 AM and 8:00 PM, Monday through Friday, except for state recognized holidays.~~

(e) A fee of ~~two hundred dollars ($200.00)~~ two hundred eighty dollars ($280.00) per one-half day (four hours) or any part of one-half day or ~~three hundred fifty dollars ($350.00)~~ four hundred sixty dollars ($460.00) for one day (four to eight hours) ~~or one thousand six hundred dollars ($1,600) per week (36 to 40 hours)~~, plus, in either case, all expenses including travel hotel, and meals shall be paid to the North Carolina Department of Labor for each nuclear inspection. ~~This fee does not include the regular fee for inspection when the boiler or pressure vessel is installed. Nuclear inspections performed outside of normal working hours shall be computed at one and one half times the normal rate plus expenses. Normal working hours shall be between the hours of 6:00 AM and 8:00 PM, Monday through Friday, except for state recognized holidays.~~

(f) ~~A fee of four hundred dollars ($400.00) per day (up to eight hours) plus all expenses, including travel, hotel and meals shall be paid to the North Carolina Department of Labor for each audit. Audits performed outside of normal working hours shall be computed at seventy five dollars ($75.00) per hour. Normal working hours shall be between the hours of 6:00 AM and 8:00 PM, Monday through Friday, except for state recognized holidays. Audits include activities other than those identified as inspections, including:~~

~~(1) reviews and surveys for ASME and National Board stamp issuance and renewal, and~~

~~(2) audits pursuant to evaluation for the issuance of North Carolina Specials.~~ A fee of three hundred twenty dollars ($320.00) per one-half day (four hours)

or any part of one-half day or five hundred thirty dollars ($530.00) for one day (four to eight hours), plus, in either case, all expenses including travel hotel, and meals shall be paid to the North Carolina Department of Labor for audits.

(g) Fees for inspections and audits performed by the Director, his designee, or a deputy inspector outside of normal working hours or in excess of eight hours per inspection visit shall include an additional thirty dollar ($30.00) fee per hour in addition to the normal inspection or audit fee.

(h) Fees shall be negotiable for annual contracts for shop inspections whereby the organization requesting inspection services requires the use of the inspector on a full time basis (thirty six to forty hours per week for a period of fifty two weeks). Payment of the fees shall be made in monthly installments.

(i) Printed information derived from the database for boilers and pressure vessels maintained by the Division is available for public scrutiny. Charges for providing this service shall be payable upon receipt of invoice to the North Carolina Department of Labor. Charges for this service are as follows:

(1) Requests for database information for which the Division has created the information selection criteria and printout format for its own use, and which can be furnished without the need for special programming will be furnished for a charge of twenty dollars ($20.00) plus twenty-five cents ($0.25) per page.

(2) Requests for database information which requires special selection criteria or printout format, and which requires the need for special programming services to derive the requested information or format, will be furnished for a charge of seventy-five dollars ($75.00) plus twenty-five cents ($0.25) per page.

(j) Copies of inspection reports or other inspection records may be provided upon written request. Copies of these records are available for a charge of fifteen dollars ($15.00) per request and twenty-five cents ($0.25) per page.

Statutory Authority G.S. 95-69.11.

SECTION .0300 - ENFORCEMENT OF STANDARDS

.0301 INSPECTION DOCUMENTATION

~~(a) Upon receipt of the inspection report and fee, the director shall determine whether or not a boiler or pressure vessel complies with G.S. Chapter 95, Article 7A, and these Rules.~~

~~(b) If the director determines that the boiler or pressure vessel is in compliance with Chapter 95, Article 7A, and these Rules, he shall immediately issue an inspection certificate authorizing use of the boiler or pressure vessel.~~

~~(c) If the director determines that the boiler or pressure vessel is not in compliance with G.S. Chapter 95, Article 7A, or these Rules, but can be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and these Rules, he shall so notify the owner or user by letter within 10 working days and specify what repairs or alterations are required.~~

~~(d) The owner or user shall return the letter to the director within 15 days of its receipt:~~

~~(1) certifying that the required repairs or alterations have been completed; or~~

~~(2) explaining any delay and requesting additional time to complete the repairs or alterations; or~~

~~(3) certifying that use of the boiler or pressure vessel has been discontinued.~~

~~The director may grant a grace period of up to 60 days from the certificate expiration date.~~

~~(e) Upon completion of the required repairs or alterations, the director shall issue an inspection certificate for the boiler or pressure vessel.~~

~~(f) If the director determines that the boiler or pressure vessel is not in compliance with G.S. Chapter 95, Article 7A, or these Rules and cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and these Rules, he shall so notify the owner or user by letter, within 10 working days, that the boiler or pressure vessel is condemned and that its operation is thereafter unauthorized.~~

~~(g) Upon receipt of the letter notifying the owner or user that repairs or alterations are required, or that the boiler or pressure vessel is condemned, the owner or user shall have 30 days in which to appeal that determination to the commissioner.~~

~~(h) The decision of the director shall not be stayed pending review by the commissioner.~~

~~(i) Upon appeal, a hearing shall be conducted pursuant to Article 3 of G.S. Chapter 150B.~~

~~(j) The decision of the commissioner shall constitute a final agency decision subject to judicial review pursuant to Article 4 of G.S. Chapter 150B.~~

(a) The inspector shall document the results of the inspection on an inspection report.

(b) If the inspector finds that the boiler or pressure vessel is in compliance with these Rules, he shall indicate on the inspection report that the boiler or pressure vessel is satisfactory.

(c) If the inspector finds the boiler or pressure vessel is not in compliance with these Rules, he shall specify in detail on the inspection report the deficiencies and the required repairs or corrective action.

(d) The inspector shall determine if the deficiency is such that operation of the boiler or pressure vessel creates a condition of imminent danger. If a condition of imminent danger exists, the inspector shall state on the inspection report that operation of the boiler or pressure vessel should cease immediately until completion of the necessary repairs or corrective action. The inspector shall immediately notify the Director of any condition of imminent danger.

(e) If the condition of the boiler or pressure vessel is such that repairs or corrective action can not bring the boiler or pressure vessel into compliance, he shall indicate on the inspection report that the boiler or pressure vessel should be condemned from further use.

(f) For inspections revealing deficiencies, the inspector shall request the owner/user to sign the inspection report acknowledging receipt of a copy and confirming that the inspector explained the necessary repairs or corrective action.

(g) The inspector shall leave a copy of the inspection report with the owner/user, and submit the original to the Director.

(h) The inspector or the Division, at the Director's discretion, shall issue an invoice to the owner or user for the inspections made and for issuance of the inspection certificate. The owner or user shall remit payment as indicated on the invoice within 15 days to the North Carolina Department of Labor.

Statutory Authority G.S. 95-69.11; 95-69.16.

.0302 CERTIFICATE ISSUANCE

~~(a) If, during the period for which a valid inspection certificate is in effect, the director determines that a boiler or pressure vessel:~~

~~(1) does not comply with G.S. Chapter 95, Article 7A, or these Rule;~~

~~(2) constitutes a menace to public safety in its present condition, or will constitute a menace to public safety if not altered or repaired; and~~

~~(3) can be repaired or altered to comply with G.S. Chapter 95, Article 7A and these Rules; then the director shall notify the owner or user by letter:~~

~~(A) specifying what repairs or alterations are required;~~

~~(B) that continued operation of the boiler or pressure vessel constitutes a menace to public safety; and~~

~~(C) that, to avoid injury to persons and property, the owner or user should immediately discontinue the use of the boiler or pressure vessel, with the understanding that the inspection certificate will be suspended until the specified repairs or alterations have been completed, thereby voluntarily waiving any rights to operate the boiler or pressure vessel granted under Article 7A, Chapter 95 of the General Statutes.~~

~~(b) The owner or user shall return the letter to the director within 15 days of its receipt:~~

~~(1) certifying that the boiler or pressure vessel has been repaired altered in compliance with the director's specifications;~~

~~(2) indicating his intention to comply with the standards of safety for boilers and pressure vessels, with the understanding that the inspection certificate will be suspended until the boiler or pressure vessel has been repaired or altered in compliance with the director's specifications; thereby voluntarily waiving any rights to operate the boiler or pressure vessel granted under Article 7A, Chapter 95 of General Statutes; or~~

~~(3) indicating his intention to continue the operation of the boiler or pressure vessel and recognizing that the director has declared the boiler or pressure vessel a public menace and that the director has advised that the operation of the boiler or pressure vessel should be immediately suspended in order to avoid injury to persons and property.~~

~~(c) Where the owner or user acts pursuant to (b)(2) of this Rule, the director shall cause the inspection certificate to be suspended, thereby suspending operation of the boiler or pressure vessel, until the specified repairs or alterations are completed.~~

~~(d) Where the owner or user acts pursuant to (b)(3) of this Rule, or fails to return letter~~

declaring the boiler or pressure vessel a menace to public safety within 15 days of its receipt,the director, or his designee, shall post, in the manner prescribed by (e) of this Rule, a notice as follows:

The Director of the Boiler and Pressure Vessel Division of the North Carolina Department of Labor has declared the (boiler/pressure vessel) on these premises, bearing the serial number NC_____, to be a MENACE TO PUBLIC SAFETY, in that its continued operation poses substantial risk of injury to persons and property. The director has advised the owner or user of this (boiler/pressure vessel) of repairs or alterations that must be made for this (boiler/pressure vessel) to comply with the standards of safety established by the Commissioner of Labor.

The owner or user, pursuant to G.S. 96-69.17, has acted to continue the operation of (boiler/pressure vessel) without these repairs or alterations, pending a hearing to determine if the inspection certificate for this (boiler/pressure vessel) will be suspended.

(e) The notice described in (d) of this Rule shall be posted by the director:

(1) in a prominent place on the boiler or pressure vessel needing repairs or alterations;

(2) in a prominent place in the establishment where the boiler or pressure vessel is being used so that it may be easily read by members of the public and employees.

(f) Where the owner or user acts pursuant to (b)(3) of this Rule, or fails to return the letter declaring the boiler or pressure vessel to be a menace to public safety within 15 days of its receipt, the director shall, in addition to, and along with, action taken under (d) of this Rule:

(1) afford the aggrieved party an opportunity for a hearing, in accordance with G.S. Chapter 150B, to determine if the inspection certificate will be suspended as of the date of the hearing;

(2) obtain injunctive relief, on behalf of the commissioner, pursuant to G.S. 95-69.11(6); or

(3) initiate proceedings under both (f)(1) and (f)(2) of this Rule.

(g) The owner or user shall notify the director by letter, within 15 days after he receives notice pursuant to (f)(1) of this Rule, requesting a hearing to determine if the inspection certificate will suspended as of the date of the hearing.

(h) If the owner or user fails to notify the director by letter, within 15 days after he receives notice pursuant to (f)(1) of this Rule, the director shall immediately suspend the inspection certificate.

(a) The Director or his designee shall review the inspection report and if he finds the boiler or pressure vessel to be in compliance with these Rules, issue an inspection certificate to the owner/user, pending receipt of payment.

(b) The owner shall post the inspection certificate in a prominent place visible to the operator while reading the pressure. The certificate shall be placed under glass, or otherwise protected from the environment.

Statutory Authority G.S. 95-69.11.

.0303 INSPECTIONS REVEALING DEFICIENCIES

(a) If, during the period for which a valid inspection certificate is in effect, the director determines that a boiler or pressure vessel:

(1) does not comply with G.S. Chapter 95, Article 7A, or these Rules;

(2) constitutes a menace to public safety; and

(3) cannot be repaired or altered to comply with G.S. Chapter 95, Article 7A, and these Rules. Then, the director shall notify the owner or user by letter that continued operation of the boiler or pressure vessel constitutes a menace to public safety and that, to avoid injury to persons and property, the owner or user should immediately discontinue the use the boiler or pressure vessel, with the understanding that the inspection certificate will be revoked and the boiler or pressure vessel will be condemned, thereby voluntarily waiving any rights to operate the boiler or pressure vessel granted under Article 7A, Chapter 95 of General Statutes.

(b) The owner or user shall return the letter to the director within 15 days of its receipt:

(1) indicating his intention to comply with the standards of safety for boilers and pressure vessels, with the understanding that the inspection certificate will be

revoked and the boiler or pressure vessel will be condemned; thereby voluntarily waiving any rights to operate the boiler or pressure vessel granted under Article 7A, Chapter 95 of the General Statutes; or

(2) indicating his intention to continue the operation of the boiler or pressure vessel and recognizing that the director has declared the boiler or pressure vessel a public menace and that the director has advised that the operation of the boiler or pressure vessel should be immediately discontinued in order to avoid injury to persons and property.

(c) Where the owner or user acts pursuant to (b)(1) of this Rule, the director shall cause the boiler or pressure vessel to be condemned and the inspection certificate revoked.

(d) Where the owner or user acts pursuant to (b)(2) of this Rule, or fails to return the letter declaring the boiler or pressure vessel a menace to public safety within 15 days of its receipt, the director, or his designee, shall post, in the manner prescribed by (e) of this Rule, a notice as follows:

The Director of the Boiler and Pressure Vessel Division of the North Carolina Department of Labor has declared the (boiler/pressure vessel) on these premises, bearing the serial number NC_____, to be a MENACE TO PUBLIC SAFETY, in that its continued operation poses a substantial risk of injury to persons and property. The director has advised the owner or user of this (boiler/pressure vessel) that this (boiler/pressure vessel) cannot be repaired or altered so as to comply with the standards of safety established by the Commissioner of Labor.

The owner or user, pursuant to G.S. 95-69.17, has elected to continue the operation of this (boiler/pressure vessel), pending a hearing to determine if the inspection certificate for this (boiler/pressure vessel) will be revoked and the (boiler/pressure vessel) condemned.

(e) The notice described in (d) of this Rule, shall be posted by the director:

(1) in a prominent place on the boiler or pressure vessel; and

(2) a prominent place in the establishment where the boiler or pressure vessel is being used so that it may be easily read by members of the public and employees.

(f) Where the owner or user acts pursuant to (b)(2) of this Rule, or fails to return the letter declaring the boiler or pressure vessel to be a menace to public safety within 15 days of its receipt, the director shall, in addition to and along with action taken under (d) of this Rule:

(1) afford the aggrieved party an opportunity for a hearing, in accordance with G.S. Chapter 150B, to determine if the inspection certificate will be revoked and the boiler or pressure vessel condemned as of the date of the hearing;

(2) obtain injunctive relief, on behalf of the commissioner, pursuant to G.S. Chapter 95-69.11(6); or

(3) initiate proceedings under both (f)(1) and (f)(2) of this Rule.

(g) The owner or user shall notify the director by letter, within 15 days after he receives notice pursuant to (f)(1) of this Rule, requesting a hearing to determine if the inspection certificate will be revoked and the boiler or pressure vessel condemned as the date the hearing.

(h) If the owner or user fails to notify the director by letter, within 15 days after he receives notice pursuant to (f)(1) this Rule, the director shall immediately revoke the inspection certificate and condemn the boiler or pressure vessel.

(a) The owner or user shall complete any required repairs or corrective action and request an additional inspection within 30 days of the inspection, except in cases where the boiler or pressure vessel is removed from service, in which case the owner or user shall send in written confirmation, signed by the owner or user, that use of the boiler or pressure vessel has been discontinued and that the boiler or pressure vessel has been removed from the source of energy.

(b) Upon notification by the inspector of a boiler or pressure vessel for which continued operation creates a condition of imminent danger, the Director shall determine if the recommendations of the inspector are valid, and if so, he shall immediately notify the owner or user by the most expedient means possible, followed by written notification within 15 days stating that the use of the boiler or pressure vessel shall be discontinued immediately.

(c) The owner or user may continue operation of the boiler or pressure vessel, including those boilers or pressure vessels which are condemned, during the 30 day period, except that this provision shall not apply to boilers and pressure vessels after

verbal notification by the Director to the owner or user that a condition of imminent danger exists.

(d) After completion of any required repairs or corrective action, the boiler or pressure vessel shall be reinspected to the extent necessary to verify satisfactory completion of the required repairs or corrective action. For reinspections performed by deputy inspectors, an external inspection fee shall apply.

Statutory Authority G.S. 95-69.11.

.0304 APPEALS

~~(a) Upon suspension of an inspection certificate, an authorized inspector shall affix to a prominent place on the boiler or pressure vessel, a card with the following language:~~

- ~~The inspection certificate for this (boiler/pressure vessel) is suspended indefinitely.~~
- ~~Further use of this (boiler/pressure vessel) is prohibited. Any person operating this (boiler/pressure vessel) shall be subject to a fine of one thousand dollars ($1,000) or imprisonment for six months, or both.~~
- ~~This card shall be signed by the Director of the Boiler and Pressure Vessel Division.~~

~~(b) Upon revocation of the inspection certificate and condemnation of the boiler or pressure vessel, an authorized inspector shall affix to a prominent place on the boiler or pressure vessel, a card bearing the following language:~~

- ~~This (boiler/pressure vessel) is condemned. The certificate for this (boiler/pressure vessel) has been permanently revoked.~~
- ~~Further use of this (boiler/pressure vessel) is prohibited. Any person operating this (boiler/pressure vessel) shall be subject to a fine of one thousand dollars ($1,000) or imprisonment for six months, or both.~~
- ~~This card shall be signed by the Director of the Boiler and Pressure Vessel Division.~~

~~(c) The North Carolina serial number for a condemned boiler or pressure vessel shall be stamped by an authorized inspector as follows: XXXNCXXX.~~

(a) If the owner or user believes that the recommendations of the inspector are not warranted, he may request a review by the Director within 15 days of the inspection. The Director shall notify the owner or user of his decision in writing within 15 days of receipt of a request for a decision.

(b) If the owner or user believes that the decision of the Director is not warranted he may file for a judicial hearing pursuant to G.S. 150B. The decision of the Director shall not be stayed pending a judicial hearing.

(c) After verbal notification from the Director that a condition of imminent danger exists, the owner or user shall not operate the boiler or pressure vessel, however, the owner or user may file for a judicial hearing in accordance with Paragraph (b) of this Rule.

Statutory Authority G.S. 95-69.11; 95-69.18.

.0305 MENACE TO PUBLIC SAFETY NOTICE

(a) The Director or his designee shall post a menace to public safety notice on the boiler or pressure vessel:

(1) if the owner or user fails to request a reinspection within 30 days of an inspection during which time deficiencies were noted;

(2) immediately upon verbal notification by the Director regarding an inspection whereby the inspector identified a condition of imminent danger; or

(3) within 15 days after the Director renders a decision regarding an appealed decision.

(b) The notice described in this rule shall be posted in a prominent place on the boiler or pressure vessel and in a prominent place in the establishment where the boiler or pressure vessel is being used so that it may be easily read by members of the public and employees.

(c) The menace to public safety notice shall not be removed, rendered illegible or inaccessible, or otherwise obliterated except under the explicit approval of the Director.

Statutory Authority G.S. 95-69.11; 95-69.18.

~~.0305~~ .0306 VIOLATIONS

(a) Any person or legal entity operating a boiler or pressure vessel:

(1) without an inspection certificate;

(2) after the inspection certificate has expired;

(3) while the inspection certificate is suspended;

(4) after the inspection certificate has been

revoked and the boiler or pressure vessel has been condemned; or

~~(5) without the notice declaring the boiler or pressure vessel to be a menace to public safety, in the manner required by Rules .0302(c) or .0303(e)0305, when such posting is required by these Rules; or~~

(5) ~~(6)~~ in excess of the maximum allowable working pressure as stated on the inspection certificate, or outside of the design pressure or temperature of the boiler or pressure vessel, shall be subject ~~to:~~ to action as described in this Rule.

(b) Action to be taken by the Director shall include:

(1) ~~(a)~~ injunctive proceedings instituted by the ~~director~~ Director on behalf of the ~~commissioner~~ Commissioner pursuant to G.S. 95-69.11;

(2) ~~(b) the~~ criminal ~~penalties~~ prosecution ~~outlined in~~ pursuant to G.S. 95-69.18; or

(3) ~~(c)~~ both injunctive proceedings pursuant to G.S. 95-69.11 and criminal ~~penalties~~ prosecution ~~per (6)(a) and (6)(b) of this Rule.~~ pursuant to G.S. 95-69.18.

Statutory Authority G.S. 95-69.11; 95-69.14.

SECTION .0400 - GENERAL REQUIREMENTS

.0401 DESIGN AND CONSTRUCTION STANDARDS

(a) The design, construction, installation, ~~alteration,~~ inspection, stamping, ~~repair,~~ and operation of all boilers and pressure vessels except nonstandard boilers and pressure vessels and North Carolina "Specials" shall conform to these Rules and the ~~American Society of Mechanical Engineers' Boiler and Pressure Vessel Code, 1986 edition with addenda through winter, 1987,~~ ASME Code, 1992 edition, including subsequent amendments and editions, which is hereby ~~adopted~~ incorporated by reference. ~~Paragraphs A-33, A-37, A-40, A-49, A-53, and A-61 of the ASME Section I, are hereby made mandatory. This Paragraph is adopted in accordance with G.S. 150B-14(c).~~

(b) ~~The following sections of the National Board Inspection Code, 1987 edition are hereby adopted by reference and apply to all boilers and pressure vessels, as follows:~~ Repairs and alterations to boilers and pressure vessels, shall conform to the requirements of the following sections of the National Board Inspection Code, 1992 edition, including subsequent amendments and editions, which are hereby incorporated by reference:

(1) Chapter III, Repairs and Alterations to Boilers and Pressure Vessels by Welding; and

(2) Appendices ~~A and D-VR~~ C-R and C-VR.

~~This Paragraph is adopted in accordance with G.S. 150B-14(b).~~

(c) The rules of this Chapter shall control when any conflict is found to exist between these Rules and the ASME Code or the National Board Inspection Code ~~exists~~.

(d) ~~Copies of these codes are available for public inspection in the office of the division. Copies of the ASME Code can be purchased from the American Society of Mechanical Engineers, United Engineering Center, P.O. Box 3199, Grand Central Station, New York, New York 10163 for two thousand six hundred and ninety dollars ($2,690). Copies of the National Board Inspection Code can be purchased from National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229 for twenty dollars ($20.00).~~ Welded repairs and alterations may only be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "R" symbol stamp or an ASME Code symbol stamp.

(e) ~~The edition of the ASME Code, as adopted, in effect when the boiler or pressure vessel is contracted for or installed shall serve as the design criteria for the boiler proper or pressure vessel proper, except for boilers and pressure vessels covered under ASME Section III (Nuclear). The ASME Code edition adopted after the boiler or pressure vessel is contracted for or installed does not apply to the design criteria the boiler proper or pressure vessel proper.~~ Repairs of safety valves or safety relief valves shall be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "VR" symbol stamp.

~~(f) The design criteria for the boiler proper and pressure vessel proper in a nuclear energy system covered under the scope of Section III of the ASME Code, as adopted, shall be determined in the manner therein provided.~~

~~(g) The ASME Code and the National Board Inspection Code, as adopted, and these Rules shall govern all aspects of boilers and pressure vessels, except for the design criteria for the boiler proper~~

~~or pressure vessel proper, upon adoption by the division, without regard to the date that the boiler or pressure vessel was contracted for or installed.~~

Statutory Authority G.S. 95-69.11; 95-69.13; 95-69.14.

.0402 NORTH CAROLINA STAMPING AND REGISTRATION

(a) Boilers and pressure vessels shall be registered with the National Board and shall bear the National Board stamping as follows:

(1) Power boilers installed after November 2, 1946~~,~~;

(2) heating boilers (except cast iron boilers) installed after January 1, 1976~~,~~; and

(3) pressure vessels installed after January 1, 1979.~~, shall bear the National Board stamping and the manufacturer's registered national board number.~~

~~This requirement shall not apply to ASME Code constructed pressure vessels which were operated by an owner in another jurisdiction prior to January 1, 1979, and are transferred for operation at a location in this State, so long as there has been and is no change in the ownership vessel.~~

~~(b) A copy of the manufacturer's data report, signed by the manufacturer's representative and a national board commissioned inspector, shall be registered with the national board before any boiler or pressure vessel that is stamped national board is installed.~~

~~(f)~~(b) ~~Boilers or pressure vessels shall be exempt from the requirements of Paragraph (a) of this Rule when:~~

~~(1) The owner or user provides to the director reliable documentation from the manufacturer, including a third party inspection report, that the boiler or pressure vessel was designed and constructed to specifications and requirements equivalent to those enforced by the National Board of Boiler and Pressure Vessel Inspectors at the time construction of the boiler or pressure vessel, and;~~

~~(2) The director determines that the design and construction requirements of the National Board of Boiler and Pressure Vessel Inspectors in effect at the time construction were adhered to and that based upon such criteria and information that is available, the boiler or pressure vessel complies with all other provisions of the Uniform Boiler and Pressure Vessel of North Carolina and these Rules.~~ Boilers and pressure vessels may be exempted from the requirement for National Board registration. To request an exemption, the owner or user shall submit a letter of request to the Director enclosing with the letter a copy of the original manufacturer's data report and all R-1 reports of Welded Repair or Alteration for all repairs and alterations which have been made to the boiler or pressure vessel for which the exemption is being requested. The information which is submitted will be reviewed by the Director. The owner or user will be advised of the Director's decision within 10 working days with regard to the approval or disapproval of the request.

(c) Electric boilers shall bear the Underwriters' Laboratories label ~~(in in addition to any other stamping requirements)~~ requirements.

(d) The owner or user may, upon request, of the inspector making an inspection, be required to provide a manufacturer's data report for the boiler or pressure vessel.

~~(d)~~(e) When a new boiler or pressure vessel is installed, or when an existing installation receives its first certificate inspection, an ~~authorized~~ inspector shall apply a metal tag embossed with the North Carolina serial number (e.g., NC000) to the boiler or pressure vessel on or adjacent to the manufacturer's nameplate or stamping. ~~If the boiler or pressure vessel is constructed of material of such thickness that it should not be stamped, a metal tag, furnished by the division and bearing the serial number, shall be attached. Otherwise,~~ If the boiler or pressure vessel is constructed of materials having adequate thickness to allow stamping, the serial number ~~shall~~ should also be stamped onto the boiler or pressure vessel.

~~(e)~~(f) The owner or user shall keep ~~the~~ all required stamping exposed at all times unless a ~~record is kept of its location~~ clearly marked removable cover is installed so that it may be readily ~~uncovered~~ accessible at any time.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0403 MAXIMUM ALLOWABLE WORKING PRESSURE

(a) An ~~authorized~~ inspector may lower~~, to a safe level,~~ the maximum allowable working pressure of

any boiler or pressure vessel because of age, condition or ~~the condition of the boiler or pressure vessel, or~~ the circumstances under which it is ~~operated, so warrant~~ operated.

(b) The ~~authorized~~ inspector~~, in lowering the maximum allowable working pressure, shall raise the factor of safety to reflect the new pressure level and~~ shall justify the reduction in the maximum allowable working pressure and note the new maximum allowable working pressure ~~and factor of safety in~~ on the inspection report.

(c) ~~A person shall not operate any boiler or pressure vessel~~ No boiler or pressure vessel may be operated in excess of the maximum allowable working pressure as stated on the inspection certificate or outside of the temperature ranges for which the boiler or pressure vessel was designed.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0404 CONTROLS AND SAFETY DEVICES

All boilers and pressure vessels shall be equipped with all suitable controls and safety devices required for safe operation of the equipment. Controls and safety devices shown in Table-0404 in this Rule shall be considered minimum requirements for the various types of boilers and pressure vessels listed. All devices required herein and shown in Table-0404 shall be suitable for the maximum allowable operating pressure and temperature of the boiler or pressure vessel on which they are installed. Electrical wiring and connections shall meet the requirements of the current edition of the State Building Code applicable at the time of installation. The design, construction, installation, and operational requirements for controls and safety devices shall be as required in Rules .0405 through .0412 of this Section.

TABLE-0404

REQUIRED DEVICE AND REFERENCED RULE	POWER BOILER	STEAM HEATING BOILER	HOT WATER HEATING BOILER	HOT WATER SUPPLY BOILER	PRESSURE VESSEL
Safety Valve(s) .0405	x	x	x	x	x
High Limit Control .0406	x	x	x	x	x
Pressure Gauge .0407	x	x	x		x
Steam Syphon (steam boilers only) .0407	x	x			
Water Column & Gauge Glass (steam boilers only) .0408	x	x			
Low-Water Fuel Cutoff(s) (if input $\geq$ 400,000 Btu) .0409	x	x	x	x	
Temperature Gauge .0410			x	x	
Bottom Blowoff Valve(s) .0411	x	x			
Drain Valve(s) .0411	x	x	x	x	x
Make-up Water Stop Valve(s) .0411	x	x	x	x	

Back-flow preventer .0411	x	x	x	x	
Expansion Tank .0412			x	x	
Flame Failure Control .0420	x	x	x	x	

Statutory Authority G.S. 95-69.11; 95-69.14.

~~.0404~~ .0405 SAFETY VALVES

(a) Boilers and pressure vessels shall be protected from overpressurization by a safety valve. All safety valves installed on any boiler, pressure vessel, or nuclear energy system shall be constructed and stamped in accordance with the ASME Code.

(b) All safety valves ~~and safety relief valves~~ shall be stamped and capacity certified by the manufacturer indicating compliance with the National Board ~~of Boiler and Pressure Vessel Inspectors~~. The stamping shall include the set pressure (that pressure at which the valve is set to open) and the relieving capacity (the rate of flow).

(c) ~~Any repair organization, manufacturer or user who performs repairs on safety valves or safety relief valves shall hold a valid certificate of authorization and VR symbol repair stamp issued by the National Board of Boiler and Pressure Vessel Inspectors.~~ Power boilers with over 500 square feet of heating surface and electrically fired boilers having an input in excess of 1100 kW shall be provided with a minimum of two safety valves.

(d) Safety valves for heating boilers shall have a seat diameter of not less than 1/2 inch, nor more than 4 1/2 inches.

(e) Safety valves shall have a set pressure and relieving capacity in accordance with the ASME Code requirements for the type device on which the safety valve is installed. The set pressure for the safety valve shall not be greater than the maximum allowable working pressure of the boiler or pressure vessel. The relieving capacity shall not be less than the minimum required relieving capacity indicated on the manufacturer's name plate or stamping, or as otherwise required by the ASME Code. Safety valves installed on potable water heaters shall be of the combination temperature and pressure relieving type. ~~Hydropneumatic storage tanks supplying potable water at ambient temperature and containing a cushion of air shall be protected with a liquid rated safety valve installed below the water line and rated in gallons per minute with a capacity of not less than the inlet supply pump. Alternatively, when the tank is installed so that the release of water as a result of vessel rupture will not create an additional hazard, such as electrical shortage, the tank may be protected with a safety valve installed at the top of the vessel above the water line, so long as the safety valve is either:~~

~~(1) an air rated safety valve with a capacity of not less than 1 standard cubic foot per minute (SCFM) for each gallon per minute of input from the water supply pump; or~~

~~(2) a safety valve with a capacity of not less than 3,000 Btu/hr for each gallon per minute of water input.~~

(f) All safety valves installed on power boilers shall be installed on top of the boiler, or in the case of water tube boilers or on top of the upper drum, with the spindle in the vertical position. All safety valves installed on heating boilers shall be on top of the boiler or on an opening at the highest practicable part of the side of the boiler, but in no case shall the safety valve be installed below the normal operating level for a steam boiler. Safety valves installed on hot water heating boilers, hot water supply boilers, and steam heating boilers shall be installed with the spindles mounted in the vertical position. Safety valves for potable water heaters may be installed with the spindles mounted in either the vertical or horizontal position.

(g) The distance between the safety valve outlet nozzle on the boiler and the safety valve inlet shall be kept to a minimum consistent with the size of the safety valve and the pipe sizes required. In no case shall any valves or stops be installed in the inlet piping to the safety valve or in the discharge piping from the safety valve. The boiler outlet and the piping between the boiler outlet and the safety valve shall have a cross sectional area of not less than the cross sectional area of the safety valve inlet.

(h) Discharge piping from the safety valve outlet shall be the same size, or larger, than the outlet pipe connection on the safety valve and shall be

extended full size to a safe location. A safe location shall be interpreted to mean a location within six inches of the finished floor of the mechanical room, to a location outside the building terminating a safe distance above the building roof or to a location outside the building within six inches above the finished grade. When safety valve discharge piping is routed vertically, piped drainage shall be provided by the use of drip pan elbows installed on the outlet of each safety valve served.

(i) Multiple safety valves may be piped to the point of discharge using a common discharge header pipe. The header pipe size shall have a diameter sufficient to provide an equivalent cross-sectional area equal to the sum of the cross-sectional areas of the safety valve outlets to which it is connected.

(j) Safety valves on pressure vessels may be installed with the spindle in the vertical or horizontal position. The safety valve inlet, discharge piping, and the requirement for piping the discharge to a safe location shall be the same as noted for boilers. The requirement for discharge piping is optional for pressure vessels used to store compressed air, inert gasses, water, or other fluids no more hazardous than water.

(k) Safety valves for direct fired pressure vessels and for those used as air compressor storage tanks shall be installed directly on the pressure vessel with no intervening valves. Safety valves for all other pressure vessels may be installed directly on the pressure vessel or in the piping system, except as modified in this Rule. A stop valve may be installed between a pressure vessel and the safety valve if one of the following is satisfied:

(1) the stop valve is normally locked in the open position, and may only be closed when there is a full time attendant stationed at the stop valve when it is in the closed position for testing purposes; or

(2) isolating the safety valve from the pressure vessel by closing the stop valve also isolates the pressure vessel from the source of pressure.

(l) Safety valves shall be sealed to prevent the valve from being taken apart without breaking the seal. Safety valves for boilers and pressure vessels containing air, water, or steam, shall be provided with a test lever or pull test ring which may be used to test the operation of the valve. Safety valves which are required to be provided with a test lever or pull ring shall be readily accessible for testing from the work platform or other means, such as a pull chain, shall be provided so that the safety valve can be tested from the work platform.

(m) When a hot water supply boiler or storage vessel is heated indirectly by steam or hot water in a coil or pipe, the safety valve capacity shall be determined by the heating surface available for heat transfer, and the safety valve shall not be less than one inch diameter.

(n) ~~(d)~~A person shall not:

(1) attempt to remove, tamper or perform any work on any safety appliance while the boiler, pressure vessel, or nuclear energy system is in operation, except as permitted by the ASME or the National Board Inspection Code;

(2) load a safety valve in any manner to maintain a working pressure in excess of the maximum allowable working pressure as stated on the inspection certificate;

(3) operate any boiler, pressure vessel, or nuclear energy system without the safety appliances as described in these Rules, the ASME Code, and the National Board Inspection Code, or

(4) use a safety valve required by these Rules as an operating pressure control.

(o) For a pressure vessel operating in a system of such design that the maximum allowable working pressure cannot be exceeded, such as when the source of pressure is limited to a water column, the Director may waive the requirement for installation of a safety valve.

(p) Safety valve piping shall be supported sufficiently so that the piping is supported with no additional force being applied to the safety valve.

(q) Hydropneumatic storage tanks shall be provided with a safety valve rated for liquid, installed below the water line, and rated in gallons per minute commensurate with the total output of the supplying pumps. Alternatively, for those hydropneumatic storage tanks installed such that the immediate release of water as a result of vessel rupture will not create an additional hazard, a safety relief valve of not less than 3/4" NPS may be installed at the top of the tank.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0406 ~~.0407~~HIGH PRESSURE OR TEMPERATURE LIMIT CONTROL

(a) ~~Each automatically fired boiler or pressure vessel, in addition to the operating control for normal operation, shall have a high limit pressure or temperature actuated combustion control, as~~

~~applicable, that will cut off the fuel supply.~~ Each automatically fired boiler or pressure vessel shall be protected from overpressurization by two pressure or temperature operated controls which monitor the upper pressure or temperature of the water, steam, or other fluid in the boiler or pressure vessel. At least one of the controls shall be properly wired to interrupt the fuel supply to the burner and stop burner operation, or for electric boilers to interrupt the electrical supply to the heating elements or electrodes, before the maximum pressure or temperature is exceeded. One of the controls may be used as a normal operating control.

(b) In a multiple boiler or pressure vessel installation, where the pressure or temperature actuated operating control may be installed in a header or other point common to all boilers and pressure vessels in the installation, and can be isolated from any of the boilers or pressure vessels in the installation, the owner or user shall equip each boiler or pressure vessel with at least one high-limit control.

(c) For boilers installed after January 1, 1995, and for all boilers after January 1, 2000, the high limit control shall be equipped with a manual reset which shall prevent the boiler from being fired after the maximum temperature or pressure has been reached until the operator resets the switch manually.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0407 PRESSURE GAUGES

(a) Boilers and pressure vessels, other than potable water heaters, shall be provided with a pressure indicating gauge which is visible to the operator on the floor or normal work platform.

(b) Pressure gauges shall have a pressure range of not less than one and one half times the operating pressure, nor more than four times the operating pressure, except that steam heating boilers shall have an upper limit of not less than 30 psi nor more than 60 psi, and a dial travel of three inches between 0 psi and 30 psi.

(c) Hot water storage vessels and expansion tanks in boiler systems need not be provided with a pressure gauge in addition to the gauge supplied on the boiler.

(d) Steam boilers shall be provided with a syphon or equivalent which will provide a water seal and protect the gauge from being damaged by the steam.

(e) Pressure vessels, other than those used as air compressor receiver tanks, may have a remotely located pressure indicating device or a system pressure monitoring device in lieu of a pressure gauge connected directly to the pressure vessel.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0408 GAUGE GLASSES AND WATER COLUMNS

(a) Steam boilers, except for forced flow steam boilers and forced flow water boilers requiring forced circulation to prevent overheating of the tubes, shall be provided with a visible gauge glass which will allow the operator to observe the water level of the boiler. Boilers operating in excess of 400 psi shall have two gauge glasses. Two independent remote level indicators may be used in lieu of one of the gauge glasses for boilers operating in excess of 900 psi. Gauge glasses and remote level indicators must be visible to the operator while reading the pressure at the boiler.

(b) Gauge glasses shall be mounted directly on the boiler or on a water column. Gauge glasses shall be mounted so that the lowest visible part of the gauge glass is above the lowest permissible water level by at least two inches for power boilers and one inch for steam heating boilers. Gauge glasses may be installed with stop cocks or valves to allow for gauge glass replacement during boiler operation. The connections from the boiler shall be not less than 3/4 inch nominal pipe size up to and including the isolation valves, and not less than 1/2 inch outside diameter tubing from the isolation valve to the gauge glass.

(c) Gauge glasses shall be provided with a drain valve or cock and discharge outlet at the bottom-most connection of not less than 1/4 inch diameter. The discharge outlet shall be piped to a safe location to prevent injury to the operator while blowing down the gauge glass.

(d) Water columns, chambers which moderate fluctuations in water elevations for determining the operating water level in a boiler, when used, shall be designed, constructed, and stamped as required by the ASME code. The piping connections to the boiler shall be not less than 1 inch nominal pipe size for power boilers or 3/4 inch nominal pipe size for heating boilers. Water columns shall have a drain valve and discharge outlet of not less than 3/4 inch nominal pipe size.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0409 ~~.0416~~AUTOMATIC LOW-WATER FUEL CUTOFFANDWATER-FEEDING DEVICE

(a) Each automatically fired steam or vapor system boiler, and each hot water heating boiler or hot water supply boiler having a minimum safety valve relieving capacity greater than 400,000 Btu/hr, shall be equipped with an automatic low-water fuel cutoff so located as to automatically cut off the fuel supply and stop the operation of the burner before ~~when~~ the surface of the water falls to the lowest safe water line. For electric boilers, the low-water fuel cutoff shall cut off the electrical supply to the electric elements or electrodes. The lowest safe water line shall be that level identified by the manufacturer which indicates the lowest safe water level for safe operation of the boiler. ~~If a water feeding device is installed, it shall be so constructed that the water inlet valves cannot feed water into the boiler through the float chamber and so located as to supply requisite feedwater.~~ Low water fuel cutoff devices embodying a float and float bowl shall be installed so that the boiler feedwater or makeup water can not be introduced through the float ~~bowl of the device~~ chamber. ~~The lowest safe water line shall be not lower than the lowest visible part of the water glass.~~

(b) ~~Each hot water heating boiler shall be fitted with a low water cutoff control that is built for a safe working pressure equal to that of the boiler.~~ Steam and vapor boilers fired by the combustion of fuels and installed after January 1, 1995 and all steam and vapor boilers fired by the combustion of fuels after January 1, 2000 shall be protected by two low-water fuel cutoffs, one of which may also be used to regulate the normal water level.

(c) ~~Such fuel or feedwater control device may~~ The low-water fuel cutoff shall be attached directly to ~~a~~ the boiler or to the ~~tapped openings provided for attaching a water glass directly to a boiler, provided that for low pressure boilers such~~ water column. ~~connections~~ Piping from the boiler ~~are~~ shall be ~~nonferrous tees or Y's~~ not less than one-half ~~inch, pipe size,~~ inch nominal pipe size. ~~between the boiler and the water glass, so that the water glass is attached directly and as close as possible to the boiler, the straightaway tapping of the tee or Y to take the water glass fittings, the side outlet of the tee or Y to take the fuel cutoff or water feeding device.~~ The ends of all nipples shall be reamed to full-size inside diameter. The low-water fuel cutoff installed in a water boiler system may be installed anywhere in the system so long as there is no isolation valve installed between the device and the boiler.

(d) ~~Designs~~ For steam and vapor system boilers, low-water fuel cutoff designs embodying a float and float bowl shall have a vertical straightaway valve drain pipe at the lowest point in the water-equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.

(e) A coil type boiler or a watertube boiler ~~with heat input greater than 400,000 BTU/hour~~ requiring forced circulation to prevent overheating of the coils or tubes ~~shall~~ may have a flow-sensing device installed ~~in the outlet piping~~ at or near the boiler proper, in lieu of ~~the~~ a low-water fuel cutoff ~~required in this Rule~~, to automatically cut off the fuel supply when the circulation of flow is interrupted.

(f) For boilers installed after January 1, 1995, and for all boilers after January 1, 2000, for which a low-water fuel cutoff is required by these Rules, at least one of these devices shall be equipped with a manual reset which shall prevent the boiler from being fired after a low-water condition until the operator resets the switch manually.

(g) Automatically fired boilers installed after January 1, 1995 and all automatically fired boilers after January 1, 2000 shall be provided with a system to automatically maintain a constant water level so that the water level can not fall below the lowest safe water line.

Statutory Authority G.S. 95-69.14.

.0410 ~~.0411~~TEMPERATURE GAUGES

~~(a) The owner or user shall pipe boiler blowdown to a safe location.~~

~~(b) Boilers discharging blowdown that is a hazard to life or property or that enters a sewer system shall be furnished with equipment conforming to the National Board publication "Recommended Rules for Boiler Blowoff Equipment," 1973 edition, which is hereby adopted by reference.~~

~~(c) Copies of "Recommended Rules for Boiler Blowoff Equipment" are available for public inspection in the offices of the division may be obtained at a cost of two dollars ($2.00) per copy from:~~

~~The National Board of Boiler and Pressure Vessel Inspectors~~
~~1055 Crupper Avenue~~
~~Columbus, Ohio 43229.~~

~~(d) Hose bib valves may be installed on heating boilers in addition to the required blowoff valve.~~

~~(e) The discharge of safety valve, blowoff pipes, and other outlets shall be located so as to prevent injury to personnel.~~

Hot water heating boilers, hot water supply

boilers, and potable water heaters shall be provided with a temperature gauge, installed as close as practicable to the hot water outlet, which will indicate the temperature in degrees Fahrenheit. The indicating device shall have a range of approximately 2 times the intended operating temperature but not less than 1 1/2 times the intended operating temperature, nor more than 4 times the intended operating temperature.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0411 VALVES, DRAINS, AND BOTTOM BLOWOFFS

(a) Power boilers operating in excess of 100 psi must be provided with two stop valves for boiler blowoff and drain outlets. Any boiler having a common steam connection with another boiler, and having a manhole opening, shall be provided with two steam outlet stop valves with a drain or vent of not less than 3/4" NPS between the two stop valves.

(b) All boilers, except for coil-type water tube boilers, shall be provided with a drain outlet and stop valve of not less than 3/4" NPS at the lowest water containing space, except that if the boiler is provided with a blowoff outlet at the lowest water containing space, an additional drain outlet is not required.

(c) Power boilers shall be provided with a bottom blowoff outlet and valve of not less than 1" NPS nor more than 2 1/2" NPS, except as modified below:

(1) Miniature power boilers shall have a blowoff outlet of not less than 3/4" NPS.

(2) Electric power boilers not greater than 200kW shall have a blowoff outlet of not less than 3/4" NPS.

(3) Power boilers having a heating surface not greater than 100 square feet shall have a blowoff outlet of not less than 3/4" NPS.

(4) All other power boilers shall have a blowoff outlet of not less than 1" NPS.

(d) Steam heating boilers shall be provided with a bottom blowoff outlet and valve of not less than 1" NPS (nominal pipe size) nor more than 2 1/2" NPS, except as modified below:

(1) Steam heating boilers having a minimum safety valve relieving capacity not exceeding 500 lbs steam/hr shall have a blowoff outlet of not less than 3/4" NPS.

(2) Steam heating boilers having a minimum safety valve relieving capacity greater than 1205 lbs steam/hr but not greater than 2500 lbs steam/hr shall have a blowoff outlet of not less than 1 1/4" NPS.

(3) Steam heating boilers having a minimum safety valve relieving capacity greater than 2500 lbs steam/hr but not greater than 6000 lbs steam/hr shall have a blowoff outlet of not less than 1 1/2" NPS.

(4) Steam heating boilers having a minimum safety valve relieving capacity greater than 6000 lbs steam/hr shall have a blowoff outlet of not less than 2" NPS.

(5) All other steam heating boilers shall have a blowoff outlet of not less than 1" NPS.

(e) All blowoff from power boilers should discharge into a blowdown tank suitable for separating steam and water. Steam should be vented to the atmosphere or used in an energy recovery system. Water overflow should be discharged into a properly vented and approved waste water collection system, and as a minimum, the boiler blowoff shall be piped to prevent injury.

(f) Valves for power boilers shall be designed and constructed in accordance with the requirements of ASME Section I, and shall be stamped or embossed with the pressure/temperature rating of the valve.

(g) Valves for heating boilers shall be suitable for the operating pressure and temperature of the boiler.

(h) Pressure reducing valves shall be installed in the makeup water line where city pressure or water pressure is more than 75 percent of the maximum allowable working pressure of the boiler or pressure vessel.

(i) A shutoff valve shall be provided in the makeup water line next to each boiler, or for a series of boilers having a single water makeup line, the valve shall be installed next to the boiler piping system. If the water-containing capacity of the boiler exceeds 120 gallons, a check valve or back-flow preventer shall be installed on the source side of the shutoff valve.

Statutory Authority G.S. 95-69.11; 95-69.14.

~~.0410~~ .0412 EXPANSION TANKS

(a) Provisions shall be made for thermal expansion and contraction of hot water piping systems. ~~Expansion tanks~~ When expansion tanks are used

they shall be constructed and stamped in accordance with the requirements of these Rules for pressure vessels, unless exempted due to the vessel size or operating limits. ~~ASME Code, Section VIII, Division 1, and registered with the national board when any of the following limitations are exceeded:~~

~~(1) water temperature of 200°F;~~

~~(2) safety relief valve setting of 30 psig; or~~

~~(3) five cubic feet nominal water containing capacity in the expansion or cushion tank.~~

(b) For a closed type system the expansion tank shall be not less than that determined as follows:

Vt = [(0.00041T - 0.0466)Vs]/[(Pa/Pf) - (Pa/Po)] where:

Vt = minimum volume of tank(s), gal

Vs = volume of system, not including tanks, gal

T = average operating temperature, deg F

Pa = atmospheric pressure, psi

Pf = fill pressure, psi

Po = maximum operating pressure, psi

Statutory Authority G.S. 95-69.11; 95-69.14.

~~.0409~~ .0413 CLEARANCE

(a) ~~When boilers are replaced or new boilers are installed in either existing or new buildings, a minimum height of three feet shall be provided between the top of the boiler proper and the ceiling and at least three feet between all sides of the boiler and adjacent walls or other structures.~~ All boilers and pressure vessels shall be located so that adequate space is provided for proper operation, for the inspection of all surfaces, tubes, waterwalls, economizers, piping, valves and other equipment, and for maintenance and repair, including replacement of tubes. Boiler clearances shall remain free of all items, including temporarily stored items, other than boiler piping and trim. Boiler piping and trim shall not impede access to the boiler.

(b) ~~Boilers having manholes shall have at least five feet clearance and pressure vessels shall have at least two feet clearance from the manhole opening and any wall, ceiling or piping or other obstruction that will prevent a person from entering the boiler or vessel.~~ Adequate clearance for boilers and pressure vessels shall not be less than the following:

(1) Three feet of clearance shall be provided between the boiler or pressure vessel on all service sides, and clearances as recommended by the manufacturer on all other sides. Service side shall be interpreted as any side, including the top, of a boiler or pressure vessel on which clearance is necessary to access operating controls, safety devices, drain and blowoff valves, or inspection openings.

(2) Cabinet mounted boilers, such as those used primarily for process or cooking, and having a maximum input of 400,000 Btu/hr need only be provided with the clearances recommended by the manufacturer.

(c) ~~All boilers and pressure vessels shall be so located that adequate space will be provided for the proper operation of boilers and pressure vessels and their appurtenances, for the inspection of all surfaces, tubes, waterwalls, economizers, piping, valves and other equipment, and for the necessary maintenance and repair and replacement of tubes.~~ As an alternative to this Rule, replacement boilers and pressure vessels in existing buildings may meet the requirements in effect at the time that the original boiler or pressure vessel was installed.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0414 GAS-FIRED JACKETED STEAM KETTLE

~~(a) The director shall issue inspection certificates for gas fired jacketed steam kettles constructed pursuant to the ASME Boiler and Pressure Vessel Code, Section VIII, provided the following additional requirements of this Section are met.~~

~~(b) Welded joints in contact with products of combustion shall be of Type No. 1 of Table UW-12, Section VIII.~~

~~(c) When parts subjected to pressure are made of carbon steel material, the minimum thickness shall be one fourth inch. The minimum thickness of stainless steel or nonferrous pressure parts shall be as specified in the applicable part of Subsection C.~~

~~(d) When in contact with products of combustion, carbon steel material shall be of pressure vessel quality. Austenitic stainless steel parts shall be of either extra low carbon or stabilized grades.~~

~~(e) Structural grade carbon steel shall not be used for any pressure part.~~

~~(f) The operating pressure of the jacket shall not exceed 50 psig.~~

~~(g) Vessels constructed under this Rule shall not~~

~~be marked with the UM symbol regardless of volume.~~

~~(h) No steam or waters shall be withdrawn from the jacket for use externally to the vessel.~~

~~(i) The capacity of the safety valve in pounds of steam per hour shall be at least equal to the BTU rating of the burner divided by 1,000.~~

~~(j) The jacket shall be furnished with the following minimum appurtenances and controls:~~

~~(1) a pressure gauge;~~

~~(2) a water gauge glass;~~

~~(3) a separate connection, fitted with a check valve and stop valve, for adding water to the jacket (the water may be added while the vessel is not under pressure);~~

~~(4) an automatic gas valve controlled by pressure or temperature to maintain the steam pressure in the jacket below the safety valve setting;~~

~~(5) a low water cutoff that will cut off the fuel to the burner if the water in the jacket drops below the lowest permissible water level as established by the manufacturer; and~~

~~(6) a safety pilot control that will cut off the fuel to both the main burner and the pilot burner in case of pilot flame failure.~~

Gas-fired jacketed steam kettles having a steam space of such size that it is subject to these rules shall be equipped with the operating controls and safety devices required for boilers.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0415 ~~.0405~~AGE LIMIT FOR CERTAIN BOILERS AND PRESSURE VESSELS

(a) ~~A boiler or pressure vessel shall not be operated for longer than 20 years from the date of its installation if it:~~ Except as provided in Paragraph (b) of this Rule, a boiler or pressure vessel shall not be operated for longer than 20 years from the date of its installation if it is not constructed according to the ASME Code and has riveted longitudinal lap joints.

~~(1) is not constructed according to the ASME Code;~~

~~(2) has riveted, longitudinal lap joints; and~~

~~(3) has been operated for the major part of its operating life in excess of 50 psig.~~

(b) ~~A boiler or pressure vessel meeting the criteria listed in (a) of this Rule may be operated for more than 20 years from the date of installation upon the director's approval and at such working pressure as he may set.~~ The Director may authorize operation of a boiler or pressure vessel meeting the criteria listed in Paragraph (a) of this Rule after the owner or user satisfactorily completes such additional examinations, tests, and engineering evaluations as may be deemed necessary by the Director, to demonstrate that the boiler or pressure vessel is suitable for operation at the maximum allowable working pressure for the term of the inspection certificate.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0416 ~~.0406~~REINSTALLATION OF CERTAIN BOILERS AND PRESSURE VESSELS

~~A boiler or pressure vessel that:~~

~~(1) is not constructed pursuant to the ASME Code;~~

~~(2) is not registered with the national board; and~~

~~(3) is presently operating at a location in this State, shall not be removed and reinstalled at any location in this State, if the reinstallation is accompanied by a change of ownership of the boiler or pressure vessel.~~

(a) Except as provided in Paragraph (b) of this Rule, a boiler or pressure vessel that is not constructed pursuant to the ASME Code and is operating at a location in this State, shall not be removed and reinstalled at any location in this State.

(b) The Director may authorize operation of a boiler or pressure vessel meeting the criteria listed in Paragraph (a) of this Rule after the owner or user satisfactorily completes such additional examinations, tests, and engineering evaluations as may be deemed necessary by the Director, to demonstrate that the boiler or pressure vessel is suitable for operation at the maximum allowable working pressure for the term of the inspection certificate.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0419 ~~.0413~~AIR AND VENTILATION REQUIREMENTS

(a) A permanent source of outside air shall be provided for each boiler room to permit satisfactory combustion of ~~the fuel~~ fuels as well as proper ventilation of the boiler room under normal operating conditions. Provisions for combustion and ventilation should comply with the edition of the State Building Code applicable to the date of installation of the boiler, but in no case shall the net free louvered area be less than .00083 sq. ft

per 1000 Btu.

~~(1) The total requirements of the burners for all fired pressure vessels in the boiler room must be used to determine the louver sizes whether fired by solid, liquid, or gaseous fuels; however, the minimum net free louvered area must not be less than one square foot.~~

~~The following table or formula shall be used to determine the net louver area in square feet:~~

~~Input BTU/Hr.~~	~~Required Air Cu. Ft./Min.~~	~~Minimum Net Louvered Area Sq. Ft.~~
~~500,000~~	~~125~~	~~1.0~~
~~1,000,000~~	~~250~~	~~1.0~~
~~2,000,000~~	~~500~~	~~1.6~~
~~3,000,000~~	~~750~~	~~2.5~~
~~4,000,000~~	~~1,000~~	~~3.3~~
~~5,000,000~~	~~1,250~~	~~4.1~~
~~6,000,000~~	~~1,500~~	~~5.0~~
~~7,000,000~~	~~1,750~~	~~5.8~~
~~8,000,000~~	~~2,000~~	~~6.6~~
~~9,000,000~~	~~2,250~~	~~7.5~~
~~10,000,000~~	~~2,500~~	~~8.3~~

~~Btu/hr~~

~~100 x 1.5~~

~~divided by 300 = Minimum Net Area Req. Sq. Ft.~~

~~60~~

(b) ~~(2)~~When mechanical ventilation is used in lieu of ~~Item (1)~~ Paragraph (a) of this Rule, the supply of combustion and ventilation air to the boiler room and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ~~ventilating fan~~ louver shall not exceed 500 feet per minute and the total air delivered shall be equal to or greater than shown in ~~Item (1)~~ Paragraph (a) of this Rule.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0420 BURNER CONTROLS

Fired boilers and pressure vessels shall be provided with burner controls and shall be equipped with suitable exhaust flues or chimneys, as required by the edition of the North Carolina State Building Code applicable to the installation of the boiler. While inspection of burner control requirements is not considered a normal part of the certificate inspection, the inspector may require the owner to demonstrate compliance with this Rule. Failure to satisfactorily demonstrate compliance shall be justification for refusal to issue an inspection certificate. Automatically fired boilers and pressure vessels shall be protected by a flame failure device which will cut off the fuel supply and prevent ignition in case of a flame failure.

Statutory Authority G.S. 95-69.11; 95-69.14.

~~.0415~~ .0421 NORTH CAROLINA SPECIAL

(a) ~~Preconstruction special.~~ The North Carolina Department of Labor may issue an inspection certificate for a boiler or pressure vessel constructed under standards equivalent to those established in the ASME Code if an application for permission to construct and install a North Carolina Special is submitted to and approved by the ~~director~~ Director prior to commencing construction. The application, which may be in the form of a letter, shall contain relevant data proving that its construction is equivalent to ASME standards., ~~including but not limited to:~~

~~(1) design calculations;~~

~~(2) certified mill tests or their equivalent;~~

~~(3) a record of welding qualifications and performance tests as required by Section IX of the ASME Welding and Brazing Qualifications Code;~~

~~(4) shop drawings; and~~

~~(5) weld joint details.~~

The ~~director~~ Director or his designee may elect to visit, at the expense of the owner, user or manufacturer, the facility where the boiler or pressure vessel is under construction in order to audit the manufacturer's construction techniques, personnel qualifications, and quality control program.

(b) ~~Out-of-state special.~~ The North Carolina Department of Labor may issue an inspection certificate for a boiler or pressure vessel which has operated in another state even if the ASME construction and stamping requirements otherwise contained in the North Carolina Rules are not satisfied if the following requirements are satisfied:

(1) The state in which the boiler or pressure vessel was operated enforces ASME code requirements for similar boilers and pressure vessels;

(2) the boiler or pressure vessel was inspected during construction by an inspector commissioned by the state in which the item was installed or manufactured; and

~~(3) all documentation as required in paragraph (a) above is submitted to the director and found acceptable;~~

~~(4) the boiler or pressure vessel complies with the ASME Code as far as practica-~~

~~ble, as determined by the director;~~

~~(5)~~ (3) the report from the last certificate inspection performed in the state in which the boiler or pressure vessel was previously installed is made available to the ~~director~~ Director, and the inspection resulted in the applicable authorization for ~~operation;~~ operation.

~~(6) design calculations for pressure vessels to be operated in excess of 3,000 psi include a fatigue analysis as described in ASME Section VIII, Division 2, to determine the operating lifetime of the pressure vessel, and the proposal for operation details the owners owner's monitoring program to verify compliance to the fatigue analysis;~~

~~(7) the results of any additional examination or test deemed necessary by the director are satisfactory; and~~

~~(8) the maximum allowable working pressure for the boiler or pressure vessel as established in the calculations is consistent with what is required by the ASME Code for similar boilers or pressure vessels.~~

(c) ~~Boilers and pressure vessels operating pursuant to section (a) and (b) shall meet all installation, alteration, inspection, repair and operation requirements of the North Carolina Rules.~~ The applicant shall submit a design specification, certified by a professional engineer, to the Director to verify that the boiler or pressure vessel meets the ASME Code as far as is practicable. The following documentation shall be included as a minimum:

(1) design calculations and drawings;

(2) material test reports or their equivalent, and for material not allowed by ASME, an evaluation of the materials in comparison to the most similar material approved for ASME construction;

(3) a record of welding qualifications as required by Section IX of the ASME Welding and Brazing Qualifications Code; and

(4) satisfactory results of any additional examination or test deemed necessary by the Director.

(d) Design calculations for pressure vessels to be operated in excess of 3,000 psi shall include a fatigue analysis as described in ASME Section VIII, Division 2, to determine the operating lifetime of the pressure vessel, and a proposal for operation that details the owner's monitoring program to verify compliance with the fatigue analysis.

(e) The maximum allowable working pressure for the boiler or pressure vessel as established in the calculations shall be consistent with what is required by the ASME Code for similar boilers or pressure vessels.

(f) Boilers and pressure vessels operating as North Carolina State Specials shall meet all installation, alteration, inspection, repair, and operation requirements of these Rules.

(g) The Director may approve operation of boilers and pressure vessels which were constructed to the requirements of a department of the federal government which enforces requirements equivalent to the ASME Code, provided an application as otherwise required by these Rules is submitted to the Director and found acceptable.

Statutory Authority G.S. 95-69.11; 95-69.14.

SECTION .0500 - NON-STANDARD BOILERS AND PRESSURE VESSELS

.0501 GENERAL REQUIREMENTS

(a) All aspects of a nonstandard ~~power~~ boiler or pressure vessel including, but not limited to, its installation, repair, alteration, inspection, appurtenances, and operation shall conform to the ASME Code and the National Board Inspection Code and these Rules, except for the design criteria for the boiler or pressure vessel proper and pressure piping.

(b) Replacement parts for the boiler ~~proper and pressure piping~~ or pressure vessel shall conform to the ASME Code and these Rules.

(c) An ~~authorized~~ inspector shall determine the maximum allowable working pressure for a nonstandard ~~power~~ boiler or pressure vessel in accordance with these Rules ~~pursuant to the formula in Paragraph A-33 of the ASME Code, Section I.~~

(d) The maximum allowable working pressure on the shell of a nonstandard boiler or pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the material, the efficiency of the longitudinal joint, inside diameter of the weakest course and the factor of safety set by these Rules.

(e) For cylindrical pressure parts subject to internal pressure:

(TStE)/(RFS) = maximum allowable working pressure, psig.

(f) Design variables:

(1) TS = ultimate tensile strength of shell plate; if unknown, it shall be taken as 45,000 psi;

(2) t = minimum thickness of shell plate of weakest course, in inches;

(3) E = efficiency of longitudinal joint depending upon construction;

(A) values for riveted joints are determined by calculated riveted efficiency; and

(B) values for fusion welded joints are determined pursuant to the following table:

WELD JOINT DESIGN	EFFICIENCY
single lap weld	0.40
double lap weld	0.50
single butt weld	0.60
double butt weld	0.75

(4) R = inside radius of weakest course of shell, in inches, provided the thickness does not exceed 10 percent of the radius; if the thickness is over 10 percent of the radius, the outer radius shall be used;

(5) FS = factor of safety allowed by these Rules.

(g) The maximum allowable working pressure for cylindrical nonstandard boilers and pressure vessels subject to external pressure, flat or formed heads, and non-circular boilers and pressure vessels shall be determined by the most applicable rules for new construction in the ASME Code.

(h) The maximum allowable working pressure for cast iron boilers, including boilers having cast iron shells or heads and steel or wrought iron tubes, shall be not greater than 30 psig for water service and 15 psig for steam service.

(i) Replacement parts, repair, and alteration of nonstandard boilers and pressure vessels shall be as required for ASME stamped boilers and pressure vessels of similar design.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0502 NONSTANDARD HEATING BOILERS

~~(a) All aspects of a nonstandard heating boiler including, but not limited to, its installation, repair, alteration, inspection, appurtenances, and operation shall conform to the ASME Code, The National Board Inspection Code, and these Rules, except for the design criteria for the boiler proper.~~

~~(b) Replacement parts for the boiler proper shall conform to the ASME Code and these Rules.~~

~~(c) The maximum allowable working pressure for a nonstandard heating boiler shall be as follows:~~

~~(1) boilers used for steam service - 15 psig;~~

~~(2) riveted boilers - determined pursuant to Paragraph A-33 of the ASME Code, Section I, except where hot water service is used, the maximum allowable working pressure shall not exceed 160~~

psig or 250°F;

(3) welded boilers determined pursuant to Section IV of the ASME Code; or

(4) cast iron boilers (including boilers having cast iron shells or heads and steel or wrought iron tubes) 30 psig for water service and 15 psig for steam service.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0503 NONSTANDARD PRESSURE VESSELS

(a) All aspects of a nonstandard pressure vessel including, but not limited to, its installation, repair, alteration, inspection appurtenances, and operation shall conform to the ASME Code, the National Board Inspection Code, and these Rules, except for the design criteria for the pressure vessel proper.

(b) Replacement parts for the pressure vessel proper shall conform to the ASME Code and these Rules.

(c) The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the weakest course and the factor of safety set by these Rules.

(d) TStE RFS = maximum allowable working pressure, psig, where:

(1) TS = ultimate tensile strength of shell plate; if unknown, it shall be taken as 45,000 psi for temperatures not exceeding 700°F;

(2) t = minimum thickness of shell plate of weakest course, in inches;

(3) E = efficiency of longitudinal joint depending upon construction;

(4) R = inside radius of weakest course of shell, in inches, provided the thickness does not exceed 10 percent of the radius; if the thickness is over 10 percent of the radius, the outer radius shall be used;

(5) FS = factor of safety allowed by these Rules.

(e) The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules for new construction in Section VIII, Division 1 of the ASME Code.

(f) The maximum allowable working pressure for formed heads under pressure shall be determined by the appropriate formulas for new construction in Section VIII, Division 1 of the ASME code and the tensile strength in Paragraph (c) of this Rule.

(1) values for riveted joints are determined by calculated riveted efficiency; and

(2) values for fusion welded joints are determined pursuant to the following table:

PERCENT
single lap weld...40
double lap weld... 60
single butt weld ... 60
double butt weld ... 75
forge weld 70
brazed steel 80

Statutory Authority G.S. 95-69.11; 95-69.14.

.0504 FACTORS OF SAFETY

(a) For nonstandard power boilers, the factor of safety is four and one-half, except for horizontal-return tubular boilers having continuous longitudinal lap seams more than twelve feet in length, where the factor of safety is eight. When this latter type of boiler is removed from its existing setting, it shall not be reinstalled for pressure in excess of fifteen psig.

(b) The factor of safety for nonstandard power boiler with lap-riveted longitudinal seams less than twelve feet in length is six.

(c) The factor of safety for a nonstandard power boiler with butt and double-strapped longitudinal seams is five.

(d) The factor of safety for nonstandard heating boilers is that used in computing its maximum allowable working pressure.

(e)(d) For nonstandard pressure vessels, the factor of safety is four, except that for non-ASME Code constructed hydropneumatic storage tanks containing water under pressure at ambient temperatures the factor of safety is two.

Statutory Authority G.S. 95-69.11; 95-69.14.

SECTION .0600 - HOT WATER VESSELS USED FOR SUPPLY OR STORAGE

.0601 MINIMUM STANDARDS

(a) All hot water vessels used for supply, storage or both that are installed after January 1, 1951, and that exceed any of the limitation listed under (1), (2) or (3) of this Paragraph shall, in

addition to meeting all other requirements of this Section, be constructed and stamped pursuant to the ASME Code, Section IV or Section VIII, Division 1, as applicable:

(1) heat input of 200,000 BTU's per hour;

(2) water temperature 200°F; or

(3) nominal water containing capacity of 120 gallons.

(b) All hot water vessels used for supply, storage or both shall be equipped, at a minimum, with the following controls and devices as applicable:

(1) Operating temperature control;

(2) High limit temperature control;

(3) A positive flame failure cutoff;

(4) American Gas Association approved burners and controls;

(5) At least one officially rated ASME and national board approved type relief valve or at least one officially rated ASME and national board approved type pressure temperature relief valve of the automatic reseating type set to relieve at or below the maximum allowable working pressure of the vessel; and

(6) When more than one relief valve is required, the additional valve or valves shall be officially rated ASME and national board approved and shall be set within a range not to exceed 20 percent of the lowest pressure at which any valve is set.

(c) Relief valves shall be installed on the top of the vessel with a vertical or horizontal spindle directly connected to:

(1) a tapped or flanged opening in the vessel;

(2) a fitting connected to the vessel by a close nipple; or

(3) a valveless hot water outlet pipe located not more than three inches from the vessel.

(d) Relief valves shall:

(1) have a substantial lifting device that will lift the disk from its seat at least 1/16 inch when there is no pressure on the vessel;

(2) be spring loaded without the disk guides on the pressure side of the valve;

(3) not be smaller than 3/4 inch, nor larger than four inches; and

(4) be arranged so that they cannot be reset to relieve at a higher pressure than the maximum pressure permitted by this Section.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0602 DISCHARGE LINES

(a) Discharge lines from the relief valve, when installed, shall be full size for the entire length of the line and piped to a safe location, graded down.

(b) If discharge is piped outside, a tee shall be installed in the discharge line inside the building with a nipple at least ten inches in length turned up to relieve the drain line pressure in case of outside stoppage.

(c) The relief valve shall be installed so as to prevent water damage when tested.

(d) The operator shall manually test the relief valve by hand once each month, and every two years with an authorized inspector present.

(e) No valve of any description shall be placed between the relief valve and the hot water vessel or storage tank or on the discharge pipe between the safety relief valve and the atmosphere.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0603 VESSELS HEATED INDIRECTLY BY STEAM OR WATER

When a hot water supply or storage vessel is heated indirectly by steam or hot water in a coil or pipe, the pressure or temperature of heating medium used shall be such that the safe working pressure of the vessel is not exceeded, and a relief valve of at least one inch diameter, pipe size, set to relieve at or below the maximum allowable working pressure of that vessel, shall be installed on top of the vessel.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0604 PROHIBITION AGAINST USE

Hot water supply or storage vessels, regardless of heat input, water temperature or water containing capacity, shall not be used as heating boilers.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0605 VENT PIPES

All tanks or heaters fired by solid, liquid, or gaseous fuels shall be equipped with a vent pipe or flue conforming to the requirements of Section 7.2.1 of the National Fire Protection Association Standard 54, 1984 edition. This section is hereby adopted by reference. Copies may be obtained from the:

~~National Fire Protection Association~~
~~Publication Sales Division~~
~~Batterymarch Park~~
~~Quincy, Massachusetts 02269~~
~~at a cost of nine dollars and fifty cents ($9.50). Copies may be examined in the office of the division.~~

Statutory Authority G.S. 95-69.11; 95-69.14.

.0606 HEAT SOURCE STANDARDS

~~(a) All vessels fired by liquid or gaseous fuels or heated electrically shall be equipped with safety controls, safety limit switches, and burners or electric elements in accordance with any nationally recognized standard.~~

~~(b) Such equipment shall be stamped or labeled by a nationally recognized certifying organization.~~

Statutory Authority G.S. 95-69.11; 95-69.14.

.0607 ACCESS TO THE VESSEL

~~(a) Vessels shall be located so that access to the controls, safety relief valves and rain is practical.~~

~~(b) All vessels with a manhole shall be so located as to provide at least 24 inches clearance between the manhole and any obstruction. If the vessel is equipped with inspection openings, at least 12 inches clearance must be provided, and the manufacturer's stamping must be accessible to the inspector.~~

Statutory Authority G.S. 95-69.11; 95-69.14.

.0608 PRESSURE-REDUCING VALVES IN CITY LINES

~~Pressure reducing valves shall be installed in the city lines where city pressure or water pressure is more than 75 percent of the safe working pressure of the vessel.~~

Statutory Authority G.S. 95-69.11; 95-69.14.

.0609 SHUTOFF VALVES

~~A shutoff valve shall be provided in the cold water branch line next to each vessel. If the water containing capacity of the vessel exceeds 120 gallons, a check valve shall be installed on the source side of the shutoff valve in the branch line.~~

Statutory Authority G.S. 95-69.11; 95-69.14.

SECTION .0800 - FORMS

.0801 INSPECTION CERTIFICATE

An inspection certificate is issued by the ~~director~~ Director and certifies that a boiler or pressure vessel complies with Article 7A of G.S.Chapter 95 and these Rules. It includes the:

(1) North Carolina serial number;
(2) ~~Maximum a~~ Allowable ~~working~~ pressure;
~~(3) Safety valve set pressure;~~
~~(4) Factor of safety;~~
(3) ~~(5)~~Type of boiler or pressure vessel;
(4) ~~(6)~~Manufacturer's name;
(5) ~~(7)~~Year the boiler or pressure vessel was built;
(6) ~~(8)~~Location of the boiler or pressure vessel;
(7) ~~(9)~~Director's name applied by computer; and
(8) ~~(10)~~Commissioner's name applied by computer.

Statutory Authority G.S. 95-69.11.

.0803 NORTH CAROLINA CERTIFICATE OF COMPETENCY

A certificate of competency, signed by the Chairperson of the Board of Boiler and Pressure Vessel rules and the ~~director~~ Director is issued to persons meeting the qualifications in G.S. 95-69.15(c) and certifies that the person named has passed the inspector examination and is competent to conduct inspections for boiler and pressure vessels.

Statutory Authority G.S. 95-69.11; 95-69.14.

.0804 NORTH CAROLINA COMMISSION

A North Carolina ~~commission card~~ Commission is a wallet-sized card, signed by the Chairperson of the Board ~~of Boiler and Pressure Vessel rules~~ and certifies that the person named is competent and authorized to conduct inspections for boilers and pressure vessels.

Statutory Authority G.S. 95-69.15.

.0805 OWNER-USER AGENCY APPLICATION

An owner-user agency application states that the company seeking owner-user status agrees to abide by Article 7A of G.S. Chapter 95 and these Rules. The application contains the following:

(1) company name and address;
(2) plant name and address;
(3) name of the supervising inspector;
(4) names of inspectors and ~~the date that the North Carolina commission was issued;~~

a copy of the inspector's National Board Commission;

(5) name of a company official requesting the agency; and

(6) commissioner's signature and signature of the chairperson of board.

Statutory Authority G.S. 95-69.15.

.0807 CONTRACTOR'S REPORT

The contractor's report is a request for inspection and contains information regarding boilers and pressure vessels installed ~~in all public buildings and apartment houses of six families or more~~ which are subject to these Rules. It includes data on:

(1) the installing ~~contractor;~~ contractor's name and mailing address;

(2) the manufacturer and owner of the vessels;

(3) the ~~number~~ number, type, and location of the vessels; and

(4) the heat input ~~of hot water heaters~~, if applicable.

Statutory Authority G.S. 95-69.11.

.0808 ACCIDENT REPORT

An accident report contains information on the following:

(1) type of vessel;

(2) vessel manufacturer;

(3) safety and safety relief valves; and

(4) type and probable cause of the accident.

Statutory Authority G.S. 95-69.11.

.0809 INSPECTION REPORT

The inspection report covers in detail all pertinent information regarding the boiler or pressure vessel. The report includes all applicable identification numbers for the boiler or pressure vessel, the allowable pressure, the results of the inspection, corrective action necessary for issuance of an inspection certificate, date of inspection, and the signature of the inspector. ~~It includes:~~

~~(1) all applicable numbers and stamping for registration;~~

~~(2) the pressure allowed; and~~

~~(3) the factor of safety;~~

~~(4) information on the owner or user;~~

~~(5) allowable stress; and~~

~~(6) firetube boiler information.~~

Statutory Authority G.S. 95-69.11.

.0810 REINSPECTION REPORT

~~The reinspection report covers the condition of a boiler or pressure vessel and contains recommendations, if necessary, on changing the maximum allowable working pressure and safety valve setting.~~

Statutory Authority G.S. 95-69.11.

.0812 REPORT OF REPAIR OR ALTERATION

The ~~record of~~ report of repair or alteration describes repairs, alterations, and the results hydrostatic pressure tests.

Statutory Authority G.S. 95-69.11.

.0813 SHOP OR FIELD AUDIT REPORT

The ~~director's~~ shop or field audit report is a report of the shop or field inspection activities of an inspector pertaining to inspection of the construction of ASME boilers and pressure vessels covering the following:

(1) inspector's ~~conduct~~ activities;

(2) materials used in fabrication;

(3) welding procedures;

(4) non-destructive examinations used;

(5) ~~manufacturer;~~ manufacturing process;

(6) quality control system; and

(7) ~~authorized~~ inspector's logbook.

Statutory Authority G.S. 95-69.11.

.0814 REPORT OF NUCLEAR INSPECTOR'S ACTIVITIES

~~The report of the nuclear inspector's activities is a semi annual audit prepared by the director covering all aspects of a nuclear inspector's activities on the job site.~~

Statutory Authority G.S. 95-69.11.

.0815 REPAIR LETTER NOTICE OF NONCOMPLIANCE

The ~~repair letter~~ notice of noncompliance specifies repairs or alterations that must be made for a boiler or pressure vessel to comply with Article 7A, G.S. Chapter 95, and these Rules.

Statutory Authority G.S. 95-69.11.

.0816 MENACE TO PUBLIC SAFETY LETTER

~~The menace to public safety letter is sent by the director while inspection certificate is in effect and~~

~~informs the owner or user of the status of the boiler or pressure vessel and of his or her rights under Article 7A of G.S. Chapter 95.~~

Statutory Authority G.S. 95-69.11.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt rule cited as 15A NCAC 3I .0017.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 7:00 p.m. on November 7, 1994 at the Carteret Community College, Joslyn Hall, 3505 Arendell Street, Morehead City, North Carolina.

Business Session: The Marine Fisheries Commission will conduct a Business Session on December 2 - 3, 1994, at the MDS Center, 422 Raleigh Road, Smithfield, NC, Beginning at 9:00 a.m. on the morning of December 2, 1994, to decide on this proposed rule.

Reason for Proposed Action: Establishes guidelines and requirements for application and administration of funds appropriated by General Assembly.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearing. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 10:00 a.m., December 1, 1994. Oral presentations may be limited in length depending on the number of people that wish to speak at the public hearing.

Editor's Note: This Rule was filed as a temporary rule effective September 26, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3I - GENERAL RULES

.0017 FISHERY RESOURCE GRANT PROGRAM

(a) Purpose. The purpose of this program is to enhance North Carolina's coastal fishery resources.

(b) Types of projects. Projects shall address one or more of the following areas of research:

(1) New fishing equipment and techniques - particularly those that reduce bycatch and fishing impact on non-target species and size classes.

(2) Assess fishing industry trends - especially those that identify new opportunities and strategies that can be used to develop and conserve North Carolina fishery resources.

(3) Environmental studies - particularly those directed toward reducing adverse environmental impacts of fishing techniques, restoring fishery habitat, and understanding environmental controls of fish and shellfish abundance.

(4) Other Fishery Issues that will enhance North Carolina's coastal fisheries.

(c) Eligibility to receive grants. Proposals will be considered from a diversity of sources including, but not limited to fishers, groups of fishers, and fishing companies.

(d) Application for grants:

(1) Grant proposals shall be typed or printed, and five copies submitted to the North Carolina Division

of Marine Fisheries at Post Office Box 769, Morehead City, North Carolina 28557-0769. Submitted proposals must be postmarked no later than January 16, 1995. Proposals received or postmarked later than January 16 may not be considered for funding.

(2) Grant proposals shall contain at least the following information:

(A) Name(s), mailing address(es), telephone number(s), signature(s) and social security or federal identification number of the applicant(s).

(B) A description of the project, its objectives, and its relationship to current fishery problems/issues, written in sufficient detail to be realistically evaluated by professional fishery scientists and managers.

(C) A detailed statement of the projected costs of the project. Description of participant cost-sharing and explanation/justification of projected costs is encouraged.

(D) Biographical information documenting experience and expertise of project participants.

(E) A description of how the project will be carried out, results evaluated, and findings made public.

(F) An explanation of how the project will enhance North Carolina's coastal fishery resources.

(G) Any other information that may be needed to enable the Secretary of the Department of Environment, Health, and Natural Resources to make a decision on the application.

(3) Projects may extend up to two years from the date of award, except for aquaculture projects which may extend for three years.

(4) Once approved, project time periods may be amended for good cause, but funding may not be increased.

(e) Review of proposals:

(1) Proposals will be reviewed and applicants notified in writing of acceptance or denial by the North Carolina Division of Marine Fisheries. Incomplete proposals will be returned to the applicant with a written description of deficiencies.

(2) Proposals will be reviewed by fishery professionals who will assign scores as shown below (maximum score = 100 points):

(A) Project Quality - the likelihood that the project will produce meaningful results directly applicable to enhancing North Carolina's fishery resources (30 points).

(B) Potential for Public Benefit - the likelihood that application of successful project results would be of significant benefit to the citizens of North Carolina (20 points).

(C) Qualifications of Applicants - the likelihood that participants can successfully complete the project and effectively disseminate results to the public (20 points).

(D) Innovativeness - the likelihood that the project would provide reliable new information that would improve utilization and/or management of fishery resources (20 points).

(E) Cost Effectiveness - the accuracy and appropriateness of project costs and their relationship to expected public benefit of the completed project (10 points).

(3) Projects will be reviewed by members of the Marine Fisheries Commission, members of the relevant Marine Fisheries Commission Advisory Committee, and staff of the Division of Marine Fisheries. Competing large proposals and their reviews may be comparatively assessed by the Marine Fisheries Commission Planning Advisory Committee. Proposals to be granted will be selected by the Marine Fisheries Commission.

(f) Award of grants:

(1) The North Carolina Division of Marine Fisheries shall administer the proposal review process and shall submit a list of eligible proposals ranked in order of total review score to the Marine Fisheries Commission.

(2) The North Carolina Marine Fisheries Commission shall make all grant offers on projects including the level of funding on each project.

(3) Funds will be conveyed to grantees through contracts with the North Carolina Department of Environment, Health, and Natural Resources.

(4) Of the total funds granted for each project, up to 25 percent may be paid upon signing of the contract if such payment is requested as part of the grant application.

(5) Of the total funds granted for each project, 25 percent shall be held back and paid only upon acceptance of the final project report by the North Carolina Marine Fisheries Commission.

(6) Other payments to grantees shall be paid upon receipt of expenditure reports or invoices at intervals of not less than three months.

(7) Grants will be awarded as evenly as practicable among the Northern, Pamlico, Central, and Southern coastal areas of North Carolina.

(8) Prior to initiation of work on research projects, grantees shall secure all necessary state and federal permits and licenses.

(g) Reporting:

(1) Grantees shall submit written progress reports at six-month intervals describing status of their projects, progress toward achieving project objectives, notable occurrences, and any significant problems encountered and steps taken to overcome the problems. Forms for such reports will be available from the Division of Marine Fisheries.

(2) As a condition of receiving a Fishery Resources Grant, the applicant shall agree to submit acceptable semi-annual reports. A technical representative of the Division of Marine Fisheries shall determine if reports are acceptable. If the representative finds the report unacceptable, the project leader will be notified of deficiencies and must provide an acceptable report within 30 working days. If an acceptable report is not received in the specified time, the applicant shall be required to repay the Division a prorated refund of project costs as shown in Table 1.

Table 1. Prorated refund schedule for non-compliance with report requirements.

Percent of Work Completed and Acceptably Reported	Percent Refund
25	85
50	60
75	35
100	0

An applicant who has been found in noncompliance with reporting rules and who does not agree to provide such reports may request that the Marine Fisheries Commission informally mediate the case. To invoke this method of mediation, both the applicant and the Division of Marine Fisheries must stipulate that the Commission mediation is binding. An applicant will have a maximum of 180 days to make repayment to the Division following the final appeals process.

(3) Grantees shall submit a written draft final report within 60 days of the completion of their projects to the Division of Marine Fisheries for review and comment in a format specified by the Division of Marine Fisheries.

(A) If the Division of Marine Fisheries finds the draft final report substantially acceptable, the Division shall so notify the Marine Fisheries Commission and grantee(s). The grantee(s) shall make any needed minor corrections and re-submit the final report to the Division. The Marine Fisheries Commission will consider the Division's recommendation for approval and may approve the report and authorize final payment.

(B) If the Division of Marine Fisheries finds the draft final report substantially deficient because of lack of adherence to established procedures, insufficient sampling, lack of data to support conclusions, or other reasons pertaining to fulfillment of project requirements, the Division shall notify the Marine Fisheries Commission and grantee(s).

(i) If the Marine Fisheries Commission accepts the Division's recommendation, it shall notify the grantee(s) in writing of the steps it must take to meet its contractual obligations in order to satisfactorily complete the project and final report and receive final payment.

(ii) If the Marine Fisheries Commission rejects the Division's recommendation of substantial deficiency, it shall instruct the Division of Marine Fisheries to proceed with final approval as provided in Part (A) of this Subparagraph.

(C) Grantees may be required to give an annual verbal report on their project.

(D) The Division of Marine Fisheries shall publish an annual report summarizing the status of all projects conducted under this program.

(E) The Division of Marine Fisheries shall conduct a field review of each project at least annually. The Division may request the assistance of other agencies of the Department of Environment, Health, and Natural Resources and of the consolidated University of North Carolina to conduct field reviews.

(4) Grantees shall submit a final expenditure report or invoice within 45 days of the end of the contract.

Statutory Authority G.S. 113-134; 143B-289.4; 1993 (Regular Session 1994), c. 769, s. 106.

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CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

RULE .0201 - CONTROL MEASURES - GENERAL

Notice is hereby given that the Commission for Health Services will convene a meeting to consider a petition for rulemaking. The petition requests the Commission amend the rule with regard to anonymous testing for HIV infection located at 15A NCAC 19A .0102(a)(3) by deleting those provisions which provide for the elimination of anonymous testing.

The meeting will be conducted at 9:00 a.m. on November 4, 1994 at the Augusta Room, Four Seasons Holiday Inn, Greensboro, NC.

Comment Procedures: All interested and potentially affected persons, groups, businesses, associations, institutions or agencies are invited to attend the meeting and make their views and opinions known to the Commission for Health Services.

TITLE 18 - SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Secretary of State's Office - Notary Public Division intends to amend rules cited as 18 NCAC 7 0101 - .0103, 0202, .0204 - .0208, .0301 - .0302 and repeal .0201.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 14, 1994 at the Legislative Office Building, 300 N. Salisbury Street, 301 (F) Conference Room.

Reason for Proposed Action: Update rules to conform to current laws and practices.

Comment Procedures: Any interested person may comment at the hearing or may send written comments to the Division to be received no later than November 14, 1994. Comments should be directed to: David S. Massey, Legislative Office Building, 300 N. Salisbury Street, Raleigh, NC.

CHAPTER 7 - NOTARY PUBLIC DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0101 LOCATION AND HOURS

The Notary Public Division of the Department of the Secretary of State is located in Room 302, Legislative Office Building, 300 North Salisbury Street, Raleigh, North Carolina ~~27611~~ 27603-5909.

Office Hours for the public are 8:00 a.m. to 4:00 p.m. Monday through Friday with the exception of state holidays.

Statutory Authority G.S. 143A-23.

.0102 GENERAL PURPOSE

The general ~~purpose~~ purposes of the Notaries Public Division ~~is~~ include the review and processing of initial and reappointment applications for commissions as notaries public, the issuance of ~~notaries public~~ commissions, ~~collecting fees for each commission issued~~ the certification of instructors who teach the Notary Public Education course, the preparation of the Notary Public Education Instructors Manual, ~~maintaining~~ the maintenance of files on each notary, ~~investigating~~ the investigation of any complaints ~~made against a notary,~~ regarding the conduct of specific notaries, ~~issuing,~~ the issuance of Certificates of Authority for North Carolina notaries, ~~writing manual for use of those applying for commissions~~, ~~answering questions~~ and the providing of information regarding the ~~office~~ Notary Public Division, its regulations, and its procedures.

Statutory Authority G.S. 10A-4; 10A-6; 10A-9(f); 10A-13.

.0103 NOTARIES PUBLIC DEPUTY

The chief officer of the division is the notaries public ~~deputy~~ director, an employee of the Secretary of State, who has general supervisory control over the Division.

Statutory Authority G.S. 143A-23.

SECTION .0200 - APPOINTMENT OF NOTARIES PUBLIC

.0201 REQUIREMENTS FOR INITIAL APPOINTMENT

~~The appointment of notaries public is within the discretion of the Secretary of State. Equal consideration will be given to all persons making application on the form "Application for Initial Appointment as Notary Public" and meeting the eligibility requirements set out in G.S. 10-1.1.~~

Statutory Authority G.S. 10-1.

.0202 INVESTIGATIONS

~~In addition to any other requirements~~ To ensure that persons commissioned as notaries public and applicants for commissions satisfy statutory requirements, the Secretary of State may investigate the fitness of any applicant through inquiry to the various law enforcement offices of the state and state or local officials.

Statutory Authority G.S. 10A-4(c); 10A-13(d).

.0204 DISPOSITION OF COMMISSIONS

After notary public commissions have been issued, they will be sent directly to the register of deeds in the county in which the applicant ~~holds legal residence~~ lives or, if the applicant does not reside in North Carolina, in the county in which the applicant works. The commission will not be delivered to the applicant. The applicant will receive a transmittal letter of notice to appear before the Register of Deeds to take the oath of office.

Statutory Authority G.S. 10A-8.

.0205 FEE

~~(a)~~ No commission will be issued until the statutory fee has been received.

~~(b) An application may be withdrawn and the fee refunded upon request of the applicant prior to the issuance and mailing of the commission. After a commission has been issued and mailed, no refunds or changes will be made.~~

Statutory Authority G.S. 10A-7.

.0206 REQUIREMENTS FOR REAPPOINTMENT

(a) For reappointment as a notary public, ~~either~~ the applicant must complete a current "Application for Reappointment as Notary Public" ~~or the form sent the notary at the time of issuance of last commission must be completed and submitted~~ and must submit it to the Notary Public Division with the statutory fee.

(b) ~~The applicant must submit new recommendations meeting the requirements for an initial appointment if the last commission held has been expired for more than 10 years.~~

~~(c)~~ Commissions reappointing a notary may not be issued more than two weeks prior to expiration of the current commission.

(c) ~~(d)~~Commissions will not be back-dated.

Statutory Authority G.S. 10A-6.

.0207 REVOCATION OF COMMISSIONS

(a) Any ~~uncollectible~~ fee payable to the Notary Public Division that is not paid within 10 days following notice from the Division will be cause for immediate revocation of the commission of the notary public owing that fee.

~~(b) Any conviction of a felony which results in loss of citizenship will be cause for immediate revocation.~~

~~(c) Any misconduct on the part of a notary public in line of duty may result in revocation of commission if it is determined that the best interest of the public will be so served.~~

~~(d) A second legitimate complaint against any notary public shall be considered just cause for revocation of commissions.~~

(b) ~~(e)~~When a commission ~~shall be~~ is revoked, the register of deeds for the county in which the notary was appointed and the notary public shall be notified in writing by the Secretary of State and the date of revocation shall be given.

Statutory Authority G.S. 10A-7; 10A-13(d).

.0208 CERTIFICATES OF AUTHORITY

~~(a)~~ Certificates of authority shall be issued for any qualified notary public upon request and receipt of ~~a two dollar ($2.00)~~ the statutory fee of six dollars and twenty five cents ($6.25) by the Secretary of State.

~~(b) Certificates of authority may be issued by the register of deeds for counties in which notaries are not qualified upon receipt of certified copy of commission from register of deeds in county in which qualified.~~

Statutory Authority G.S. 10A-9(f).

SECTION .0300 - NOTARY PUBLIC EDUCATION PROGRAM

.0301 APPROVED COURSE OF STUDY

In order to be approved by the Secretary of State, a course of study for applicants for appointment as a notary public must be:

(1) based on the Instructor's ~~Guide~~ Manual developed by the Department of Community Colleges and the Department of the Secretary of State;

(2) taught by an instructor certified by the Secretary of State.

Statutory Authority G.S. 10A-4(b)(3).

.0302 INSTRUCTORS

(a) In order to be certified to teach a course of study for notaries public, an instructor must:

(1) complete a six hour instructor's course taught by the notaries public ~~deputy~~ director or other person approved by the Secretary of State a test upon the completion of such course with a grade of not less than 80;

(2) have six months active experience as a notary public and maintain a current commission as a notary public; provided that registers of deeds, their assistants and deputies, and clerks of court, their assistants and deputies and practicing attorneys at law shall be exempt from this requirement so long as they remain employed in the capacities named;

(3) purchase ~~an approved~~ the current notary public ~~manual~~ guidebook.

(b) Certification shall be effective for two years and may be renewed by taking a recertification course taught by the notaries public ~~deputy~~ director or other person approved by the Secretary of State.

Statutory Authority G.S. 10A-4(b)(3).

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 2D .0825.

The proposed effective date of this action is February 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Amendment allows DOT to make public plan holder lists for bidding on DOT contracts.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rules are published or until the date of any public hearing held on the proposed rules, whichever is longer.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS

.0825 CONFIDENTIALITY OF COST ESTIMATES AND PLAN HOLDER LISTS

(a) All cost estimates prepared for the purpose of comparing bids; and the names and identity of corporations, firms, partnerships, individuals or joint venturers who have requested plans or proposal forms for the purposes of bidding, shall be confidential and not disclosed until after the opening of bids.

(b) This information shall be furnished to the Federal Highway Administration in accordance with written rules, regulations, policies and procedures of the Federal Highway Administration.

(c) As an exception to the confidentiality rule provided for in Paragraph (a) of this Rule, the list of plan holders or potential bidders will be made public in accordance with the following criteria: The plan holder list shall be made public by the Proposal and Contract Section of the Highway Design Branch through the Department's Supportive Service Contractor and other agents so designated by the State Highway Engineer-Design. The list shall be issued in writing twice between the

Date of Advertisement and the Date of Bid Opening. Each potential bidder who obtains a set of plans/proposals for a project shall be given the option of having his name remain confidential. ~~pursuant to the following criteria for either Subparagraph (1) or (2) of this Paragraph:~~

~~(1) The list shall be made public on those projects determined by the State Highway Engineer Design to be of a special nature on which the work is not routine highway work or a major portion of the work will most likely be done by specialty contractor/subcontractors.~~

~~(2) The list of potential bidders shall be released on the projects in which a pre-bid conference is held. The list of potential bidders will be made available from the Proposals and Contracts Section of the Highway Design Branch one week prior to the opening of bids. Each potential bidder that obtains a set of plans/proposals for a project will be given the option of having its name remain confidential.~~

Statutory Authority G.S. 133-33.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 17 - BOARD OF DIETETICS/NUTRITION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dietetics/Nutrition intends to amend rules cited as 21 NCAC 17 .0107, .0109, .0113; adopt .0201 - .0203.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 7, 1994 at the Kresge Auditorium, Cate Center, Meredith College, 3800 Hillsborough Street, Raleigh, North Carolina.

Reason for Proposed Action:
21 NCAC 17 .0107, .0109 & .0113 - To amend rules governing provisional license, issuance and renewal of license, and fees.
21 NCAC 17 .0201 - .0203 - To adopt rules governing review and approval of weight control services.

Comment Procedures: Requests to make oral comments at the hearing must be received by the Board no later than 5:00 p.m. on October 31, 1994; written comments must be received by the Board no later than 5:00 p.m. on November 14, 1994. Comments should be limited to 10 minutes. Requests and comments should be addressed to the Executive Secretary, North Carolina Board of Dietetics/Nutrition, 1418 Aversboro Road, Garner, North Carolina 27529.

SECTION .0100 - LICENSURE

.0107 ~~.0007~~PROVISIONAL LICENSE

(a) Applicants shall provide evidence of completing academic requirements by:

(1) Submitting official transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or

(2) Requesting, completing and submitting documents for the evaluation of an equivalent major course of study as referenced in 21 NCAC 17 .0003 and submitting official transcripts from all colleges attended.

(b) Applicants shall provide evidence of completing supervised practice requirements by:

(1) Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved/accredited to meet the dietetic practice requirements of ADA; or

(2) Requesting, completing and submitting documents for the evaluation of the supervised practice experience as referenced in 21 NCAC 17 .0003.

(c) Applicants shall provide evidence of making application to take the examination.

(d) Provisional license may be issued for a period not exceeding one year and may be renewed from year to year for a period not to exceed five ~~three~~ years upon completion of the following:

(1) payment of annual fees~~,~~;

(2) submission of completed application as prescribed by the Board~~, and~~ ;

(3) provision of documentation of having completed 15 hours of continuing education approved by the Board for a one year period;

(4) provision of evidence of making application to retake the examination;

(5) provision of evidence of being under the direct supervision of licensed dietitian(s)/nutritionist(s).

(e) Provisional licensed dietitian/nutritionist shall be under the direct supervision of licensed ~~dietitians/nutritionists~~ dietitian(s)/nutritionist(s) as defined in 21 NCAC 17 .0015(b) for at least 70 percent of the hours employed.

(f) Following the successful completion of the licensing examination, the provisionally licensed dietitian/nutritionist shall remit completed application for upgrading license, payment of fees, and evidence of passing examination referenced in 21 NCAC 17 .0005.

(g) The Board will revoke a provisional license if the applicant fails to apply for the examination for licensure in a timely manner or does not take the examination.

Statutory Authority G.S. 90-356; 90-361.

.0109 ~~.0009~~ISSUANCE AND RENEWAL OF LICENSE

(a) An applicant may be issued a license based on compliance with requirements stated in G.S. 90-357 and these Rules. The Board shall issue a license to any person who meets the requirements upon payment of the license fee prescribed. The Executive Secretary shall send each licensee whose credentials have been approved a license.

(b) Licensee shall notify the Board of any change in the licensee's personal or professional address within 30 days of that change.

(c) Licenses will expire on March 31 of every year. Beginning in 1993, the licenses shall be issued for a period of one year beginning April 1 and ending March 31.

(d) At least 30 days prior to the expiration date of the license, the licensee shall be sent written notice of the amount of renewal fee due, and a license renewal form which must be returned with the required fee.

(e) Licensee's renewal application must be postmarked prior to the expiration date in order to avoid the late renewal fee. Failure to receive renewal notice shall not be justification for late renewal.

(f) The Board shall not renew the license of a person who is in violation of the Act, or Board rules at the time of application for renewal.

(g) Applicants for renewal of licenses must provide documentation of having met continuing education requirements by submitting either:

(1) Evidence of maintaining certification as a Registered Dietitian by the Commission on Dietetic Registration; ~~A copy of the current CDR registration card certifying completion of 30 hours of continuing education approved by the CDR for a two year period ending August 31;~~ or

(2) A Summary of Continuing Education on the form prescribed by the Board documenting completion of 30 hours of continuing education approved by the Board for a two year period ~~ending August 31~~.

(h) A renewal license shall be furnished to each licensee who meets all renewal requirements by the expiration date.

(i) The Board may provide for the late renewal of a license upon the payment of a late fee within 60 days of the expiration date of March 31. If the license has been expired for 60 days or less, the license may be renewed by returning the license renewal form with all appropriate fees and documentation to the Board, postmarked on or before the end of the 60-day grace period.

Statutory Authority G.S. 90-356; 90-362; 90-363.

.0113 ~~.0013~~FEES

In accordance with the provisions of the Act, the following fees, where applicable, are payable to the Board by check or money order. Fees are nonrefundable, except for the Issuance Fee, if application is not approved.

Application Fee	$ 25.00
Charter Issuance Fee (Paid by July 1, 1992)	45.00
Issuance Fee	75.00
License Renewal Fee	25.00
Late Renewal Fee	50.00
Examination Fee	100.00
Provisional License Fee	35.00
Duplicate License Certificate Fee	15.00
Duplicate License Identification Card Fee	10.00
Returned Check Fee	15.00
Service Fee for Academic Program Approval by Board	50.00
Service Fee for Supervised Practice Program Approval by Board	75.00
Service Fee for Approval of License Requirements of Another State, Political Territory or Jurisdiction as Equivalent	50.00
Service Fee for Prior Approval by Board for Continuing Educational Programs	25.00
Service Fee for Annual Continuing Education Approval by Board for Licensee	25.00
Service Fee for Weight Control Program or Service Review and Action by Board	200.00

Statutory Authority G.S. 90-356(9); 90-364.

SECTION .0200 - REVIEW AND APPROVAL OF WEIGHT CONTROL SERVICES

.0201 DEFINITIONS

As used in this Section, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:

(1) A "weight control program or service" means a program or service designed for one or more population groups to achieve and/or maintain a healthy weight;

(2) "Reviewer" means a person certified by the Board who shall:

(a) be a dietitian/nutritionist currently licensed and in good standing according to G.S. 90, Article 25;

(b) meet certification requirements approved by the Board;

(c) perform duties in compliance with G.S. 90, Article 25 and the rules of the Board; and

(d) review weight control programs to determine compliance with G.S. 90, Article 25 and the rules of the Board.

Statutory Authority G.S. 90-356; 90-368.

.0202 REQUIREMENT FOR REVIEW AND APPROVAL

A person who directly provides a weight control program or service shall not be affected by the requirements of G.S. 90, Article 25 provided that:

(1) The person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian or /nutritionist; and

(2) The program is reviewed by a dietitian/nutritionist duly licensed according to G.S. 90, Article 25 and certified by the Board as a reviewer; and

(3) Changes to the nutrition component of the program are not initiated without prior approval of a dietitian/nutritionist duly licensed according to G.S. 90, Article 25 and certified by the Board as a reviewer; and

(4) Consultation is available for the person from a dietitian/nutritionist duly licensed according to G.S. 90, Article 25. If the consultation is provided out-of-state, it is available for the person from a dietitian/nutritionist duly licensed in another state that has licensure requirements that the Board approves as equivalent to those of this state or a dietitian registered by the CDR of the ADA; and

(5) The person presenting the program follows the program that is reviewed.

Statutory Authority G.S. 90-356; 90-368.

.0203 REVIEW AND BOARD ACTION

(a) The review shall consist of an assessment and a recommendation to the Board for Board approval or denial.

(1) The review of the program shall:

(A) be completed annually, occur at the location of the weight control program and include the requirements set forth in the "North Carolina Weight Control Services Guidelines on Nutrition" dated September 1994 and incorporated herein by reference including any subsequent amendments and editions. Copies of this standard may be purchased for twenty-five dollars and fifty cents ($25.50) plus shipping and handling from the Office of the Executive Secretary. The requirements shall include but need not be limited to the following:

(i) appropriateness of screening process;

(ii) appropriateness of weight control food plan, supplements, food, and/or food products for program's clients/groups;

(iii) assurance of nutritional adequacy;

(iv) appropriateness of materials, which include but are not limited to written nutrition education handouts, recorded education materials, lesson or instructional plans, food plans and screening tools;

(v) appropriateness of rate of weight change promoted;

(vi) provision and appropriateness of maintenance or follow up program; and

(B) be delivered by personal service to the authorized person(s) at the weight control program for signature indicating that the review and recommendation had been received and read; and

(C) be submitted in writing to the Board by certified mail postmarked no later than five work days after the date of the review on a Board review form. The form shall provide for but need not be limited to the following information:

(i) legal name and mailing address of the program;

(ii) name of person to whom review results are issued;

(iii) ownership disclosure;

(iv) location of program;

(v) list of person(s) exempt from G.S. 90, Article 25;

(vi) date of review;

(vii) recommendation for Board approval or denial;

(viii) original signature and license number of Licensed Dietitian/Nutritionist performing the review;

(ix) response to review by authorized person(s) from the weight control program;

(x) original signature(s) of authorized person(s) from the weight control program indicating that the recommendation had been received and read; and

(xi) Board action for approval or denial;

(2) A response to the review, which may be filed by the authorized person(s) from the weight control program, shall be submitted in writing to the Board by certified mail postmarked no later than 10 days after the date of the review and shall be documented on a Board review form.

(b) Only one approval card shall be issued to each weight control program site upon verification that the person(s) providing the program are in compliance with applicable laws and rules. The Board approval card shall be posted in a conspicuous place where it may be readily observed by the public upon entering the premises of the program. The owner or director shall be responsible for keeping the card posted at the location agreed upon by the reviewer of the program. Any approval card issued by the Board shall remain the property of the Board and shall be surrendered to the Board on demand.

(c) The written review of the weight control service shall be accessible to the public during normal business hours for inspection upon request. The program shall have reasonable opportunity to ensure that none of the following information will be disclosed during the inspection:

(1) information on the client health screening or the physician release forms including but not limited to diagnosis, prognosis or treatment of a named

person, unless that person consents in writing to the disclosure; or

(2) any confidential medical information under G.S. 8, Article 53 regarding a named person, unless that person consents in writing to the disclosure.

(d) Upon a finding that the person does not comply with G.S. 90, Article 25 or the rules, the person(s) authorized by the weight control program shall have 60 days from the date of receipt of denial from the Board to:

(1) remedy any noted deficiencies such that the program meets the minimal nutrition standards as referenced in "North Carolina Weight Control Services Nutrition Guidelines"; and

(2) have a second review by a certified reviewer as defined in 21 NCAC 17 .0201(2).

(e) After three reviews in which approval is denied, or a maximum of 120 days of providing the weight control services without filed official approval from the Board, the person(s) who is(are) providing the weight control services shall be in violation of G.S. 90, Article 25.

(f) The approval from the Board shall remain in effect for 12 months unless any of the following occurs at which time the program shall be reviewed:

(1) change of ownership;

(2) change in program;

(3) termination of business operations;

(4) failure to comply with G.S. 90, Article 25 or the rules of the Board.

(g) The weight control program shall be reviewed and approved by the expiration date on the approval card.

(h) The Board shall be notified in writing within 30 days after the occurrence of any of the following circumstances:

(1) change in name;

(2) change in mailing address;

(3) change in manager, administrator or director of program;

(4) change in ownership;

(5) change in location;

(6) change in person(s) exempt from G.S. 90, Article 25;

(7) change in program; or

(8) cessation of business operations for any other reason.

(i) Weight control programs currently in operation as of the effective date of this rule shall be reviewed and approved no later than January 31, 1996. After January 31, 1996, weight control programs shall be reviewed and approved within 120 days of starting to provide the weight control service.

Statutory Authority G.S. 90-356; 90-368.

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CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rule cited as 21 NCAC 32B .0305.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 1:00 p.m. on October 31, 1994 at the Medical Board Office, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: To recognize the validity of Part I of the National Board of Osteopathic Examiners if taken after January 1, 1987.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed to: Administrative Procedures, Medical Board, P.O. Box 20007, Raleigh, NC 27619, no later than November 14, 1994.

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0300 - LICENSE BY ENDORSEMENT

.0305 EXAMINATION BASIS FOR ENDORSEMENT

(a) To be eligible for license by endorsement of credentials, graduates of medical schools approved by the LCME or AOA must supply certification of passing scores on one of the following written examinations:

(1) National Board of Medical Examiners;

(2) FLEX - under Rule .0314 of this Section;

(3) Written examination administered by an allopathic or composite state medical board which issued the original license on the basis of written examination other than FLEX;

(4) National Board of Osteopathic Examiners, Part 1 taken after January 1, 1987 and ~~all parts~~ Parts 2 & 3 taken after January 1, 1990; or

(5) USMLE - Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215 of this Subchapter.

(b) Graduates of medical schools not approved by LCME or AOA, must supply certification of passing scores on one of the following written examinations:

(1) FLEX - under Rule .0314 of this Section;

(2) Written examination other than FLEX from the state board which issued the applicant's original license by written examination together with American Specialty Board certification; or

(3) USMLE - Step 1, Step 2, Step 3 of the USMLE or a combination of examinations as set out in Rule .0215(c) of this Subchapter.

(c) A physician who has a valid and unrestricted license to practice medicine in another state, based on a written examination testing general medical knowledge, and who within the past five years has become, and is at the time of application, certified or recertified by an American Specialty Board, is eligible for license by endorsement.

(d) Applicants for license by endorsement of credentials with FLEX scores that do not meet the requirements of Rule .0314 of this Section must meet the requirements of Paragraph (c) in this Rule.

Statutory Authority G.S. 90-10; 90-13.

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CHAPTER 34 - BOARD OF MORTUARY SCIENCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to amend rules cited as 21 NCAC 34C .0203 - .0204 and .0301.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 10:00 a.m. on November 15, 1994 at the Conference Room, 801 Hillsborough Street, Suite 405, Raleigh, NC 27603.

Reason for Proposed Action:
21 NCAC 34C .0203 - To require that pulverized cremated remains shall be placed in closed containers.
21 NCAC 34C .0204 - To provide that cremation containers shall be rigid and not necessarily entirely combustible.
21 NCAC 34C .0301 - To require that the crematory be informed of the party who will accept the cremated remains or that the information is unknown.

Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the NC Board of Mortuary Science, P.O. Box 27368, Raleigh, NC 27611-7368.

SUBCHAPTER 34C - CREMATORIES

SECTION .0200 - EQUIPMENT AND PROCESSING

.0203 PULVERIZATION

Unless otherwise directed by the authorizing agent, cremated remains recovered after cremation shall be pulverized in the processor required by Rule .0201 of this Section, and the cremated remains shall then be immediately placed in a temporary closed container or in an urn or other permanent closed container.

Statutory Authority G.S. 90-210.41(9); 90-210.45(e); 90-210.50(a).

.0204 CREMATION CONTAINERS

Cremation containers shall be closed, rigid and leak resistant ~~and made entirely of combustible materials~~. ~~A casket shall not be required as a cremation container.~~

Statutory Authority G.S. 90-210.41(8); 90-210.50(a).

SECTION .0300 - AUTHORIZATIONS, REPORTS, RECORDS

.0301 AUTHORIZATION TO CREMATE

(a) No human remains shall be cremated before the crematory operator receives a written statement signed by an authorizing agent, containing the following:

(1) Express authorization to cremate~~.~~ ;

~~(2) Name of person who will accept the cremated remains.~~

(2) ~~(3)~~ The ~~Ultimate~~ ultimate disposition of the cremated remains, if known~~.~~ ;

(3) The name of the party who will accept the cremated remains if known; and

(4) A declaration that the information requested in Subparagraph (a)(2) or (3) of this Rule is unknown at this time if such is the case.

(b) The crematory operator shall retain the statement and shall make it available to the Board or its agents upon request.

Statutory Authority G.S. 90-210.44; 90-210.46(a),(e); 90-210.50(a).

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

AGRICULTURE

Plant Industry

2 NCAC 48E .0302 - General Permits		
Rule Returned to Agency for Failure to Comply with G.S. 150B-21.9(a) & 150B-21.2(f)		*09/15/94*

COMMERCE

Alcoholic Beverage Control Commission

4 NCAC 2T .0103 - Beer Franchise Law; "Brand" Defined	*RRC Objection*	*09/15/94*

Energy

4 NCAC 12C .0007- Institutional Conservation Program	*RRC Objection*	*06/16/94*
Rule Returned to Agency		*07/14/94*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***08/16/94***

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Health: Epidemiology

15A NCAC 19A .0101 - Reportable Diseases and Conditions	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
15A NCAC 19A .0102 - Method of Reporting	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
15A NCAC 19C .0602 - Accreditation	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*

Mining: Mineral Resources

15A NCAC 5B .0013 - Response Deadline to Department's Request(s)	*RRC Objection*	*09/15/94*

Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions and Procedures	*RRC Objection*	*08/18/94*
Rule Returned to Agency	*Obj. Cont'd*	*09/15/94*
Agency Filed Rule for Codification Over RRC Objection	***Eff.***	***10/01/94***

HUMAN RESOURCES

Vocational Rehabilitation Services

10 NCAC 20C .0203 - Determination of Order of Selection Priority Category	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
10 NCAC 20C .0316 - Other Goods and Services	*RRC Objection*	*09/15/94*

Agency Revised Rule	*Obj. Removed*	*09/15/94*

JUSTICE

Criminal Justice Education and Training Standards

12 NCAC 9B .0208 - Basic Training -- Probation/Parole Officers	*RRC Objection*	*07/14/94*

LICENSING BOARDS AND COMMISSIONS

Physical Therapy Examiners

21 NCAC 48F .0002 - Fees	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*

Therapeutic Recreation Certification

21 NCAC 65 .0004 - Academic - TRS Examination	*RRC Objection*	*08/18/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*

TRANSPORTATION

Division of Motor Vehicles

19A NCAC 3D .0519 - Stations	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0520 - Inspection Station Personnel		
Rule Withdrawn by Agency		*09/15/94*
19A NCAC 3D .0522 - Licensing Requirements	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0523 - Denial, Suspension or Revocation of Licenses	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0524 - Operation of Safety/Exhaust Emissions Inspection Stations	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0532 - Reinspection	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0533 - Brakes	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0534 - Lights	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0544 - Inspection Procedure for Emissions Equipment	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0549 - Operation to Replace Windshield Inspection Stickers	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*
19A NCAC 3D .0550 - Recognition of Safety Inspections Issued by Certain Other Jurisdictions		
Rule Withdrawn by Agency		*09/15/94*
19A NCAC 3D .0551 - Approval and Disapproval of Vehicles	*RRC Objection*	*09/15/94*
Agency Revised Rule	*Obj. Removed*	*09/15/94*

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

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Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
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James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
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Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
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Ralph A. Williams v. Durham County Department of Social Services	94 OSP 0167	Reilly	09/13/94	
Haywood County Department of Social Services				
Dorothy Morrow v. Haywood County Department of Social Services	94 OSP 0186	West	06/17/94	
Pamlico County Department of Social Services				
Mrs. Dietra C. Jones v. Pamlico Department of Social Services	94 OSP 0251	Chess	08/09/94	
Lee County Health Department				
James Shackleton v. Lee County Health Department	94 OSP 0344	Gray	08/17/94	
Mental Health/Mental Retardation				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services				
Julia Morgan Brannon v. Wake County MH/DD/SAS	94 OSP 0214	Reilly	04/14/94	
Smoky Mountain Center				
Betty C. Bradley v. Smoky Mountain Center	93 OSP 1505	Becton	09/26/94	9:14 NCR 1141
Real Estate Appraisal Board				
Earl Hansford Grubba v. Appraisal Board	94 OSP 0753	Nesnow	08/24/94	
N.C. State University				
Laura K. Reynolds v. N.C. State University - Dept. of Public Safety	92 OSP 0828	Morgan	05/26/94	
Ashraf G. Khalil v. N.C.S.U.	93 OSP 1666	Nesnow	09/19/94	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Department of Transportation				
Phyllis W. Newnam v. Department of Transportation	92 OSP 1799	Morgan	08/11/94	
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0297*	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0500*	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	07/15/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
Angela Trueblood Westmoreland v. Department of Transportation	93 OSP 1001	Morrison	09/30/94	9:14 NCR 1136
Bobby R. Mayo v. Department of Transportation	93 OSP 1004	Nesnow	09/01/94	
Tony Lee Curtis v. Department of Transportation	93 OSP 1037	Reilly	08/26/94	
Darrell H. Wise v. Department of Transportation	93 OSP 1353	Gray	07/26/94	
Henry C. Puegh v. Department of Transportation	93 OSP 1710	Nesnow	05/24/94	
Kenneth Ray Harvey v. Department of Transportation	94 OSP 0423	Morrison	08/17/94	
Bobby R. Mayo v. Department of Transportation	94 OSP 0632	Gray	08/23/94	
Michael Bryant v. Department of Transportation	94 OSP 0728	Chess	08/15/94	
University of North Carolina at Chapel Hill				
Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
Beth Anne Miller, R.N.-C v. UNC James A. Taylor Std Health Svc.	94 OSP 0800	Nesnow	09/26/94	
University of North Carolina at Greensboro				
James S. Wilkinson v. UNCG Police Agency	93 OSP 0850	Chess	08/22/94	
UNC Hospitals				
Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect.	94 OSP 0509	Morrison	06/15/94	
Wake County School System				
Lula Mae Freeman v. Wake County School System	94 OSP 0576	Morrison	06/28/94	
The Whitaker School				
Dwayne R. Cooke v. The Whitaker School	94 OSP 0328	Chess	06/02/94	
Winston-Salem State University				
David Phillip Davis v. Winston-Salem State University	93 OSP 0947	Reilly	09/28/94	
Tonny M. Jarrett v. Winston-Salem State University Campus Police	93 OSP 0953	Reilly	09/12/94	
STATE TREASURER				
Retirement Systems Division				
Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0015	Morgan	05/26/94	9:6 NCR 403
Judith A. Dorman v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0223	Morgan	08/11/94	
Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0161	Morrison	05/18/94	
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Marion Franklin Howell v. Teachers' & State Employees' Retirement Sys.	93 DST 0475	Nesnow	08/04/94	9:12 NCR 941
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0883	Chess	06/15/94	
James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./ Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	
Deborah W. Stewart v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. and Anthony L. Hope & Derrick L. Hope	94 DST 0045	Nesnow	07/25/94	9:10 NCR 768

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
TRANSPORTATION				
Taylor & Murphy Construction Co., Inc. v. Department of Transportation	93 DOT 1404	Chess	08/24/94	
UNIVERSITY OF NORTH CAROLINA				
Heather Anne Porter v. State Residence Committee	92 UNC 0799	Nesnow	08/23/94	
Nixon Omolodun v. UNC Physicians and Associates	94 UNC 0295	Chess	06/27/94	

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 93 OSP 1001

ANGELA TRUEBLOOD WESTMORELAND, Petitioner, v. NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, Respondent,	RECOMMENDED DECISION

The appeal of Angela Trueblood Westmoreland, an employee of the North Carolina Department of Transportation, was heard by Fred G. Morrison Jr., Senior Administrative Law Judge, Office of Administrative Hearings, on May 11, 1994, in Raleigh, North Carolina. After the hearing, the parties filed written arguments, proposed findings and conclusions, and pertinent cases.

APPEARANCES

FOR THE PETITIONER:
Abraham Penn Jones
Attorney at Law
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FOR THE RESPONDENT:
Elaine Humphries
Assistant Attorney General
NC Dept. of Justice
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ISSUE

Did the Respondent illegally discriminate against the Petitioner on the basis of her race in not selecting her for the position of Accounting Specialist II?

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Based on competent evidence admitted at the hearing, the stipulations of the parties, and matters about which this agency might take judicial notice, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In April 1992, Respondent hired Petitioner, Angela T. Westmoreland, as a Clerk/Typist III (Paygrade 57) in the office of the Chief Engineer of Pre-Construction.

2. In December 1992, Petitioner was promoted to the position of Accounting Technician II (Paygrade 61) in the Contracts Payable Office of the Fiscal Section of DOT. Petitioner's direct supervisor was Don Gower, an Accountant II and the head of the Contracts Payable Office. The office also consisted of an Accounting Technician I (Paygrade 59) who was a black female who had also been recommended by Mr. Gower, a white male.

3. Between March 26, 1993, and April 8, 1993, Respondent posted a vacancy for the position of Accounting Specialist II (Paygrade 69 - Position #00593) in the Contract Payable Office. The minimum qualifications for the position were graduation from a four-year college or university with a major in accounting or business administration and one year of accounting experience, a two-year degree and three years of accounting experience, or graduation from high school and six years of experience as an accounting technician. Respondent received 72 applications for this position.

4. On April 1, 1993, Petitioner applied for the position of Accounting Specialist II. Petitioner, a white female, is a 1990 graduate of Meredith College with a B.S. degree in business administration with a concentration in accounting. Prior to being employed by DOT in April 1992 as a clerk/typist, Petitioner worked for one month in March 1992 as a temporary doing bank reconciliations. During college, Petitioner worked one semester in a co-op session for a brokerage firm and one summer for a telecommunications company.

5. Mr. Gower interviewed a total of 22 applicants, including Petitioner, on April 16, 1993.

6. Mr. Gower recommended to his supervisors that Petitioner be selected for the position of Accounting Specialist II. His primary reasons were: 1) Petitioner's four months work experience in the Contracts Payable Office during which she had performed well and had shown a great deal of potential; 2) the fact that he had been training her to assume additional duties; 3) the fact that she received the highest score on a general math/accounting knowledge test he developed for this interview process; and 4) she made the best impression at the interview.

7. Wayne Stallings, the Controller of DOT, reviewed the "position package" and Mr. Gower's recommendation of Petitioner. He gave Mr. Gower five minority applications and told him to interview three, which Mr. Gower did, but reported that Petitioner remained his top choice. Mr. Stallings recommended to his supervisor, Mercidee Benton, the Director of Administration of DOT, that a black male applicant be selected. Ms. Benton had the authority to make the final decision.

8. The black male applicant was a 1973 graduate of North Carolina Central University (NCCU) with a B.A. degree in accounting. In 1981, he received a master's degree in business administration from NCCU. He had nearly 20 years experience in accounting, including supervisory experience. He had a satisfactory score on the "test" administered by Mr. Gower and responded well to the interview questions. The applicant did not have state government accounting experience, but because of his supervisory experience, Mr. Stallings said he viewed him as a potential successor to Mr. Gower, who had expressed interest in being transferred.

9. Ms. Benton concurred in the recommendation of the black male applicant who was subsequently approved for the position. The applicant accepted the offer of employment. In early July 1993, on the Friday before the Monday the applicant was to report for work, he informed DOT that he had decided to take another position in state government.

10. Mr. Stallings and Ms. Benton discussed their options and mutually agreed to forward Petitioner's name to the DOT Personnel Department for approval for the position of Accounting Specialist II. Their decision was based on the fact that Petitioner met the minimum qualifications for the position and because Mr. Gower had strongly advocated her selection. Also, additional delay in filling the position would further add to the backlog of work in the Contracts Payable office. They had previously agreed that Petitioner would be their second choice if Mr. Robinson declined.

11. Prior to any action being taken by the Personnel Department, Ms. Benton, a black female, received a telephone call from Sondra Davis, a black female in the Governor's Office, expressing concern that there were persons who had applied for the position that were better qualified than Petitioner. Ms. Benton pulled the "package" from the Personnel Department in order to reassess the recommendation of Petitioner.

12. Ms. Benton and Mr. Stallings again discussed their options and decided to re-post the vacancy. Their stated reasons were: 1) Mr. Gower's strong opposition to every other applicant in the pool; 2) Mr. Gower's strong desire that the selected applicant have state government accounting experience; and 3) the fact that one applicant with extensive state government accounting experience was not a "viable candidate" because of an unfavorable reference. They testified that they hoped to attract additional applicants with state government accounting experience by re-posting the position because of the long period of time since the original posting. The position was re-posted for state government employees only from July 27, 1993, through August 4, 1993.

13. Petitioner submitted a second application dated July 28, 1993. Respondent received a total of 13 applications and Mr. Gower interviewed four persons, including Petitioner, on August 9, 1993. Mr. Gower again recommended Petitioner for the position, citing her education, highest score on the objective test, experience in the office, and interview performance.

14. Mr. Stallings reviewed the position package. Among the four persons interviewed was Debora Morris, a black female, who was a 1981 graduate of East Carolina University with a B.S. degree in finance. She also had 27 semester hours in accounting at North Carolina State University in preparation for the CPA examination. She also had 11 years of accounting experience in the North Carolina Department of Administration, and at the time of her application was an Accounting Technician IV. The applicant had a satisfactory score on the "test" administered by Mr. Gower and responded well to his interview questions. Mr. Stallings had told Mr. Gower she was the only applicant he needed to interview. Ms. Morris had not applied before the re-posting. She had worked under Ms. Benton before at DOA.

15. Mr. Stallings recommended to Ms. Benton that Ms. Morris be selected. Ms. Benton concurred in the recommendation which was subsequently approved. The position was offered to and accepted by Ms. Morris.

16. Petitioner and Mr. Gower testified that Mr. Stallings told them that his superiors wanted a black employee in the job. Mr. Stallings and Ms. Benton denied that the Accounting Specialist II position had to be filled by a minority in order to meet affirmative action goals of the Department or that it had been predetermined that the position would be filled by a minority. Fred Aikens, a black male who was Deputy Secretary of the Department of Transportation and Ms. Benton's supervisor, testified that he never told Mr. Gower that he wanted a minority in the Accounting Specialist II position or that he was instructed or compelled by the Governor's Office to select an African-American. Mr. Aikens testified that he wanted the best qualified applicant placed in the position.

17. On September 20, 1993, Petitioner filed a petition for contested case hearing, alleging that she had been denied a promotion to the position of Accounting Specialist II and that this denial was based on her race. Petitioner is qualified for the job.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Petitioner Angela Trueblood Westmoreland is covered by G.S. 143-422.2 which provides that:

> It is the public policy of this state to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.
>
> It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

2. G.S. 126-16 mandates that:

All state departments and agencies . . . shall give equal opportunity for employment and compensation without regard to race -- to all persons otherwise qualified. . . .

3. Petitioner has a right to appeal this adverse employment decision pursuant to G.S. 126-36 which provides that:

(A)ny State employee . . . who has reason to believe that . . . promotion . . . was denied him . . . because of his race . . . shall have the right to appeal directly to the State Personnel Commission.

4. The Office of Administrative Hearings has jurisdiction to hear this matter and issue a recommended decision to the State Personnel Commission by authority of G.S. 126-37 which states that "appeals involving . . . alleged discrimination . . . shall be conducted in the Office of Administrative Hearings."

5. Where discrimination is an issue, Petitioner bears the ultimate burden of proof and must establish a prima facie case of discrimination by providing sufficient facts in order to raise an inference of discrimination. In her effort to establish a prima facie case of discrimination, Petitioner has shown that:

a. She is protected from racial discrimination;

b. She applied and was qualified for the position;

c. She was rejected once in favor of a black male;

d. She was recommended after the black male declined;

e. Her recommendation was withdrawn by a black female, following a call from a black female in the Governor's Office;

f. The search for job applicants was re-opened which resulted in an application from a qualified black female who was given the position;

g. The successful applicant once worked under the person who withdrew Petitioner's application and re-opened the search; and

h. Petitioner made the highest score on an objective test and was highly recommended twice by the supervisor for the subject position.

Thus, Petitioner has established a prima facie case of illegal discrimination on the basis of race.

6. Respondent, on the other hand, has given nondiscriminatory reasons for its decision to promote Debora Morris rather than the Petitioner. Respondent's given reasons were Morris' application, her prior experience, a favorable interview, good recommendations as well as concern expressed by the Governor's Office about Petitioner's experience; also, an opinion that she was best qualified for the job.

7. Since the Respondent has given nondiscriminatory reasons for its decision, Petitioner has the burden of proving that such reasons were merely a pretext for illegal discrimination. To meet this burden, Petitioner may rely upon the evidence used to establish her prima facie case which evidence satisfies this trier of fact that Respondent's stated reasons were merely a pretext for intentional discrimination.

8. Petitioner was denied the position because of her race.

Based on the foregoing Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

It is recommended that Petitioner be promoted to the grade and step merited with back pay, front pay, and attorney's fees.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 30th day of September, 1994.

Fred G. Morrison Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF CLAY	93 OSP 1505

BETTY C. BRADLEY,
Petitioner,

v.

SMOKY MOUNTAIN CENTER,
Respondent,

RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on April 7 and 8, 1994 and May 26 and 27, 1994 in Asheville, North Carolina. The record in the matter was closed on August 12, 1994.

APPEARANCES

Petitioner: JOHN R. MULL, Attorney at Law, Morganton, North Carolina; John R. Mull and Steven M. Kurzer appearing.

Respondent: COWARD, HICKS & SILER, Attorneys at Law, Sylva, North Carolina; J.K. Coward, Jr., appearing.

ISSUES

1. Whether Smoky Mountain Center followed proper policy and procedure in the development and implementation of the reduction in force for the Amelia Bauer-Khan Psychiatric Unit ("Unit") of the Angel Community Hospital ("Hospital") in Franklin, North Carolina.

2. Whether the reduction in force was systematically and fairly applied to the employees of the affected Unit.

SUMMARY OF DECISION

The Respondent dismissed the Petitioner from her position as an Accounting Clerk IV as part of a reduction in force ("RIF"). The evidence does not support the Petitioner's contentions that the Respondent failed to follow certain state rules and/or regulations in developing and implementing its RIF policy and that some of the "RIFed" employees were treated more favorably than she was during the RIF process. Therefore, the undersigned recommends that the Respondent's decision to terminate the Petitioner's employment be affirmed.

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. The Respondent, Smoky Mountain Center for Mental Health, Developmental Disability, and Substance Abuse Services, is an "Area Authority" which serves the seven counties in the westernmost part of North Carolina. It was established pursuant to the provisions of North Carolina General Statutes section 122C which provides for the establishment of a service delivery system for individuals

with mental illnesses, developmental disabilities and/or substance abuse problems. In addition to operating a central office and an inpatient care facility, the Respondent provides out-patient services at centers located in each of the several counties it serves.

2. The Respondent's activities are overseen by an area board of directors ("Board") which meets on a monthly basis. The meetings are open to the public. An agenda with minutes from the previous meeting and enclosures for the upcoming meeting is mailed to each member of the Board prior to the meetings.

3. Hugh Moon is the Respondent's area director. The area director is appointed by the Board, and he is the chief executive officer of the Area Authority.

4. The Respondent operated the Unit pursuant to a contract with the Hospital in Franklin, North Carolina.

5. The Unit was a secure facility on one floor of the Hospital. Patients who were admitted to the Unit were treated by the Respondent's employees. That staff included a psychiatrist, a psychologist, medical nurses and aids, and support staff.

6. The Petitioner's designated job classification was Accounting Clerk IV; her job description was Reimbursement Officer; and she was referred to by herself and on her performance evaluations as the Finance Officer for the Unit.

7. The Petitioner's main job was collecting accounts receivable, a large part of which came from third party reimbursement for services rendered by the Respondent. She was also in charge of inventory control, purchasing of dietary supplies, keeping time sheets for physicians, and keeping a calendar for "on call" workers.

8. During the early 1990's, several national trends began to impact upon the Respondent's operation of the Unit at the Hospital. First, the cost of hospital care continued to escalate annually. Second, the patient population for inpatient treatment continued to decline. Third, alternative community based services were emerging as the preferred method of treatment by health care providers and consumers. As a result, the Unit cost more and more to operate and simultaneously became less effective in delivering services.

9. For approximately five years prior to the RIF implemented at the Unit effective June 30, 1993, the Respondent's management had begun developing community based alternative services to inpatient care because management felt that it could offer the community based services mandated under the law on a more cost-effective basis and with a higher degree of success on an out-patient basis. This proposed shift to out-patient community based services was consistent with nationwide trends.

10. The future of the Unit was discussed at nearly every board meeting from about the middle of 1992 until its closure in 1993. A detailed financial analysis of the Unit was always presented by the Respondent's director of financial services, Thomas W. McDevitt, C.P.A., at the meetings whenever the Unit was discussed. The Board was acutely aware that the Unit's financial picture was not good.

11. The director of the Respondent's community based services, Ronald W. Yowell, M.S.W., kept the Board abreast of the evolving nature of services being provided to the Respondent's clients, and in particular, how the Respondent was gradually shifting its delivery system from an inpatient setting to an out-patient one. That is, services that might otherwise be offered in inpatient treatment settings would be offered in the community at local county centers, in local hospitals, and in client's homes, etc.

12. The Board considered the Unit's financial situation over a long period of time. Its first attempt to save the Unit occurred in 1992 when the Unit was downsized. Some employees were terminated

during the 1992 RIF. Other employees' job functions were changed, and still other employees began to devote more time to out-patient services.

13. In the interim between the 1992 downsize RIF and the 1993 closure RIF, several staffing changes were made. Among the measures undertaken were:

> The staff psychologist, Mike Penland, Ph.D., feeling that it was inevitable that the Unit would have to be closed, began assuming out-patient responsibilities. By February, 1993, Dr. Penland was working 80% of his time on outpatient services as community based alternative services were being developed and put into place.
>
> Mark Lawrence, M.D., the staff psychiatrist and administrative head of the Unit, also felt that closure of the Unit was inevitable and by the time of the 1993 RIF, a portion of his practice was focused toward community based alternative services.
>
> As a result of the 1992 RIF, Rita Colvard, the director of nursing on the Unit in 1992 and 1993, began working on providing out-patient services 50% of the time in Swain, Cherokee, and Graham Counties. By the time of the 1993 RIF, she was devoting more than 50% of her time to out-patient services.

14. Mr. McDevitt discussed numerous RIF issues with the Petitioner during the 1992 RIF. She received a phone call from him prior to the 1992 RIF during which he explained that her job might be eliminated during the 1992 RIF. The Petitioner protested and after further deliberations, it was decided to let her divide her time by working at one of the out-patient centers on a 50% basis. She also protested that decision. Finally it was agreed to allow her to stay on the Unit, but she had to assume some new responsibilities, some of which were of an entry level nature.

15. When the Unit continued to be cost ineffective, despite the Petitioner's valiant efforts at cutting costs and being more aggressive in seeking reimbursements, the Board decided it was necessary to close the Unit rather than to continue to operate it at a loss.

16. Upon approval of the RIF by the Board, the Board directed the necessary expansion of community based services to offset the loss of inpatient services. In addition, Broughton State Hospital was willing to accept long term patients for inpatient care and arrangements were made for short term emergency care in local hospitals.

17. After the Board adopted the resolution regarding the closing of the Unit, Brenda Rhoads, the Respondent's personnel director, was assigned the responsibility of drafting the RIF policy. After the policy was reviewed and approved by the executive committee, she was responsible for seeing that the policy was implemented on the Unit.

18. Mr. Moon prepared a memorandum regarding the 1993 RIF policy which Ms. Rhoads attached to the policy. Both of those documents were delivered to each of the Unit employees.

19. Ms. Rhoads and Mr. Yowell presented the 1993 RIF policy to the affected Unit at a meeting of the employees on April 29, 1993.

20. The Petitioner was not present at that meeting, but on the next day Ms. Rhoads spoke with the Petitioner on the telephone and informed her about the policy. She also mailed the Petitioner a copy of the policy and Mr. Moon's memorandum. The Petitioner also received a copy of the policy and the memorandum in the mail along with her paycheck in April.

21. Pursuant to the Respondent's personnel policies and procedures which are included in the October 1, 1991 version of the Employee Handbook, the Respondent develops a specific RIF policy to ensure non-discrimination each time a RIF is necessary.

22. The Respondent maintained a Personnel Policies and Procedures Manual. A copy of this manual was located in the Unit and it was available for inspection by all employees. Dr. Penland was the chair of the committee that was responsible for reviewing the manual annually. It was updated regularly.

23. The North Carolina State Personnel Commission has adopted rules and regulations that are applicable to local government employees who are subject to the State Personnel Act. Those rules and regulations are published in the Personnel Manual for Local Government Employees Subject to the State Personnel Act and are codified in title 25 of the North Carolina Administrative Code.

24. The Department of Human Resources has developed guidelines, known as Personnel Directive Number 5, for RIFs involving that agency's employees.

25. Prior to the implementation of the June 30, 1993, RIF, the Petitioner informed her superiors that she would be unable to complete her job responsibilities by the RIF date. After several consultations, Tom McDevitt agreed, on behalf of the Respondent, to contract with the Petitioner for salary, insurance, and benefit continuation through the month of July, 1993, in order to enable the Petitioner to complete her job responsibilities to the best of her ability.

26. During the course of these proceedings, the Petitioner has contended that the Respondent did not follow proper policy and procedure in the development and implementation of the RIF at the Unit in June, 1993; that the RIF was not effectuated in a fair and systematic manner in that in her opinion some employees were given preferential treatment; and that the Respondent failed to carry out its obligation to assist the Petitioner in securing other employment.

27. All the employees of the Unit were affected by the RIF, and approximately 35 employees lost their jobs.

28. Martha Geouge, personnel director for the Department of Human Resources' Western Regional Personnel Office, wrote Mr. Moon a letter in which she stated that "the rules adopted by the State Personnel Commission which apply to area mental health programs do not require that the agency adopt a [standing] reduction in force policy."

29. The Respondent's policy regarding RIFs was that anytime a reduction in force was necessary, a specific policy for the affected unit would be developed by the Respondent to address the specific needs of the reduction.

30. During the 1993 RIF, the Respondent permitted flexible work schedules over several weeks prior to the RIF in order to assist the employees in locating and securing jobs.

31. Upon the closure of the Unit in June, 1993, three Unit employees, Mike Penland, Mark Lawrence, and Rita Colvard, who had been performing some outpatient services on a part-time basis, began working in out-patient positions on a full-time basis.

32. Dr. Penland did not miss any time from employment with the Respondent as a result of the 1993 RIF, and he was not required to apply for the out-patient position he assumed after the RIF was implemented.

33. Dr. Lawrence was transferred to full-time out-patient responsibilities as a consequence of the 1993 RIF. He did not miss any time from work and did not have to apply for the position he assumed when the Unit was closed.

34. Dr. Lawrence was the only physician affected by the RIF. He was assigned to community based services at a reduced salary because he was no longer an administrative director of the Unit.

35. Rita Colvard did not miss any time from work as a result of the RIF and she did not apply for the full-time out-patient position she was transferred to when the Unit was closed.

36. A staff development position was developed by the Respondent in early 1993 because it felt that one person might more efficiently handle the functions of staff development. Those function include staff development, credentialing & privileging, orientation, risk management, etc. The Respondent developed a job description and classification with the state personnel office. The Respondent announced a job position and over thirty applications were received.

37. The Petitioner applied for the staff development position and she completed a job interview. However, a task group which had been established to analyze the need for the position recommended in July, 1993, after the RIF had been implemented, that the responsibilities of the Staff Development Director position could be achieved through the task group rather than filling the new position.

38. Mr. Yowell testified that the Petitioner was not fully qualified to fill the position, and even if the position had been filled, she would not have received it for a number of reasons, chief of which was the lack of training and other necessary experience.

39. The Petitioner was made aware of several job opening, for which she would have qualified and in which she would have had placement priorities, but she did not apply for those positions because she thought that they would result in a significant drop in salary, they were not commensurate with her education and experience, and she was not interested in returning to work at one of the community centers. By the time she applied and interviewed for the staff development position, which was ultimately not filled, the 1993 RIF was already completed.

40. George Davis is in charge of Respondent's medical records. During 1992 and 1993 as community based alternative services were developed, it became necessary to create two additional medical records support staff positions in order to process the medical records that would be generated in community based alternative services. Applications were made for the positions that were created and those positions were filled. These positions were not created in order to continue employment of any specific employee.

41. Wanda Frady was a Clerk Typist III on the Unit and she was called the office manager. She was a jack of all trades and she was employed there during the 1992 RIF and during the 1993 RIF. In 1992, she had to pick up additional responsibilities because of the elimination of some of the positions on the Unit.

42. Ms. Frady received a written copy of the RIF policy and the announcement of the RIF in April, 1993. She was affected. When she saw a job announcement posted on the bulletin board at the Unit for a Clerk Receptionist III and Medical Records III, she applied for the positions. She was offered a position.

43. Ms. Frady did not feel that a job had been created for her of that a job was waiting for her at the end of the 1993 RIF. She was aware that the Petitioner could exercise priority placement over her if she applied for the same job.

44. Virginia Arnold was a secretary at the Unit. As a result of the 1992 RIF, she began working 50% at the Unit and 25% in outpatient services. During the 1993, her position at the Unit was terminated. The RIF policy was explained to her by Brenda Rhoads. She received a written copy of the policy and discussed it with other employees.

45. Ms. Arnold applied for and was offered one of the jobs posted by the Respondent. The job was not created for her and at not time did she think that the job was waiting for her at the effective date of the RIF. The Petitioner would have been entitled to priority placement over Ms. Arnold for any vacancy that they both applied for.

46. On August 6, 1993, the Petitioner initiated a series of correspondence between herself and Hugh Moon. The Petitioner made reference to asserting her claim to any position within the reduction unit held by any employee with a retention score less than hers and also asserting her priority placement rights pursuant to Paragraph 6 of the Respondent's RIF policy.

47. Paragraph #6 of the 1993 RIF policy did not contain any reference to priority placement rights.

48. Mr. Moon responded to the Petitioner's letter by informing her that the Paragraph 6 she referred to was from a previous RIF policy and was not the policy governing the 1993 RIF involving the Unit. He enclosed another copy of the RIF policy and informed the Petitioner that a position had become vacant at Child and Family Services that Petitioner was entitled to priority consideration for if she was interested.

49. In her next letter to Mr. Moon, the Petitioner notified the Respondent of her desire to appeal her dismissal and again referred to language from RIF policies that were developed for other reductions in force during previous years.

50. The Petitioner, her husband, Mr. Moon, and Ms. Rhoads met in Mr. Moon's office on August 26, 1993 to discuss the issues raised in the various correspondence back and forth between the Petitioner and Mr. Moon. Mr. Moon asked the Petitioner what she wanted, and she responded: 1) a position equivalent in classification and salary to that which she had held prior to the 1993 RIF; and 2) the matter should be discussed with her attorney.

51. Mr. Moon decided that the Petitioner's demands were inappropriate and, in his opinion, would have resulted in an incorrect application of the RIF policy within the Unit and he denied the Petitioner's demands. He brought his decision to the Board's attention, and his decision was affirmed by the Board.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. All of the appropriate parties are properly before the undersigned administrative law judge, and the Office of Administrative Hearings has jurisdiction over the parties and of the subject matter of this hearing.

2. The Respondent is an Area Authority operating pursuant to the provisions of North Carolina General Statutes section 122C.

3. The Respondent is subject to the Personnel Rules for Local Government Employees Subject to the State Personnel Act which are codified in title 25, subchapter 1I of the North Carolina Administrative Code.

4. The Respondent is not subject to the rules promulgated by the State Personnel Commission for state employees, nor is it subject to the Department of Human Resources' Personnel Directive Number 5.

5. The Respondent had ample criteria to decide to implement a reduction in force due to lack of funds and reorganization and correctly designated the affected unit. 25 NCAC 1I .2005 (1992).

6. The 1993 RIF policy identified all of the positions on the Unit as those affected by the RIF. It identified the reasons for the RIF. It gave the effective date. It described how the RIF would affect the employees and what their rights and expectations were. It explained the expansion of community based services. It gave specific instructions regarding how the affected employees could appeal their separation. It reminded the employees to seek the assistance of the personnel office for securing other employment. Therefore, the undersigned concludes that the Respondent fairly and systematically developed its RIF policy.

7. The Petitioner has alleged that some jobs were created especially for particular people and that they received preferential treatment. The evidence indicates that the Petitioner was the only person in an Accounting Clerk IV position at the Unit. Any duty the Respondent might have had to assess such factors as her length of service and relative efficiency was superfluous since the Petitioner was the only member in her classification who was affected by the RIF. To establish that she has been treated inequitably, the Petitioner can only point to how she was treated vis a vis others in her job classification, Accounting Clerk IV, and not to how she was treated vis a vis employees in other job classifications.

8. However, even vis a vis employees in different job classifications, the evidence establishes that the Respondent has reasonable grounds for making a transition from inpatient treatment to community based out-patient treatment and for transferring those employees from the Unit that it could utilize to provide the out-patient treatment.

9. The procedure followed by the Respondent in developing and implementing the 1993 RIF policy was a fair and systematic one. There are no facts indicating that the Petitioner was unfairly singled out for separation, or that she was a victim of hasty or careless decision-making. The Petitioner is not the only employee who was terminated. The Respondent sought out and considered all the available data in arriving at its decision to close the Unit and to expand its community based out-patient services.

RECOMMENDED DECISION

The State Personnel Commission will issue an advisory opinion to the local appointing authority which will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and affirm the Respondent's decision to terminate the Petitioner's employment.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the State Personnel Commision makes its advisory decision, it shall give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the Commission's advisory decision.

The local appointing authority is required by North Carolina General Statutes section 150B-36(b) to serve a copy of its Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 26th day of September, 1994.

Brenda B. Becton
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
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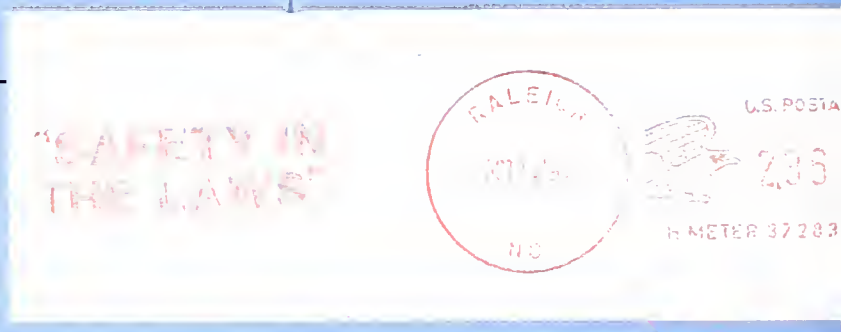

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